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DECISIONS

OF THE

SUDDER DEWANNY ADAWLUT,

Recorded in English,

IN CONFORMITY TO ACT XII. 1843,

IN

1845:

*With Indexes of Names of Parties, and the Causes of Action, and
Principal Points touched upon in the Decisions.*

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DECISIONS
OF THE
Sudder Dewanny Adawlut,

RECORDED IN ENGLISH, IN CONFORMITY TO ACT XII. 1813.

THE 4TH JANUARY 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 10 OF 1844.

*Regular Appeal from the decision of Mr. James Reily, Principal
Sudder Ameen of Dacca.*

MOOST. TARAMUNY CHOWDRAIN, APPELLANT,

versus

KISHENKUNTH AND CHUNDERNATH SHAIL, &c.

RESPONDENTS.

As the circumstances of this case are set forth with tolerable clearness and very fully, by Mr. Reily in his decree, I annex the following copy of that decree.

“ No. 10334.

KISHTOKANTH SHAILA, AND OTHERS,

versus

GOVINDOMONEE CHOWDHIRAYN, AND OTHERS.

ADJUDGED 22D AUGUST, 1843.

“ Plaintiffs declare that Juyhurree Bosoo, and Shamachurn Bosoo, and Taramonee, and Govindomonee Chowdhrayn, defendants, on the 11th Bhadur 1246, executed a kut koala, or conditional bill of sale, for rupees 12,301, for 11 annas of pergunnah Doorgapore and other property, but kept possession of the property ;

that they did not return the money, and plaintiffs applied for the issuing of the bybad process; that defendant failed to make the deposit, and the court disposed of the case, directing plaintiffs to sue in the regular way; that plaintiffs therefore sue for possession of the property.

"Shama Churn Bosoo, one of the defendants, confesses to having executed the deed of sale; but contends that the money taken has been liquidated from the malikana moshahira of the ijara held by plaintiffs of their estate.

"Taramonce and Govindomonee Chowdhrayn deny having executed the deed of sale.

"Dr. Lamb pleads that Bholanath Bosoo had 2 annas, 13 g, 1 c. 1 kranth of the property in question, which he purchased at a sale ordered in execution of a decree of court; that he has sued and got a decree of court for this share of the property, which has become final; that he has large claims of wasilat [mesne profits] due to him; that plaintiffs have besides sued for ten or twelve kismuts appertaining to his property in pergunnah Bikrampore; that the Bosoo defendants had moreover pledged the estate as security to the civil and revenue courts; that it has been repeatedly advertized for decrees of court, and that, under these circumstances, plaintiffs' claim cannot stand.

"Sucheenundun pleads that he has a claim of rupees 4,785-4, besides interest, against Juyhuree Bosoo, on account of a decree of court No. 8897; and that Taramonee became surety for this debt, when the suit was pending in special appeal; that the collector has been called upon to sell 2 annas of defendants' and 2 annas of Taramonee's share of the estate for the debt in question; that plaintiffs have colluded with defendants, and fabricated the deed of sale, with the view of destroying our claims.

"It is necessary therefore to ascertain—

1st.—Whether the parties named in the deed of conditional sale did all put their signatures to it?

2ndly.—Was the property in question held in farm by plaintiff; and ought the profits of the farm to be carried to the credit or account of the value stated in the deed of sale?

3rdly.—Whether the claim made by Dr. Lamb should be allowed?

4thly.—Whether any thing is due from defendants on account of the decrees of Sucheenundun and others, and the securities said to be taken by the collector. If so, whether they affect plaintiffs' claims?

"In considering the first point, it appears that of five witnesses named in the koala, plaintiffs have examined four, namely, Merton Juy Soor, Bhugbanchundro Surma, Bykuntanath Shaha, and Joogeeram Dass. Their evidence proves that on the 10th or 11th

Bhadur 1246, at Soothabaree, Haut Khola, in Calcutta, at defendant's dwelling house, the building on the west side, in the upper apartments, Juy Huree Bosoo, and Shama Churn Bosoo, and Taramonee, and Govindomonee defendants, sold 11 annas of their zemindaree pergunnah Doorgapore, for 12,301 rupees to Chundronath Shaha's father Otheetram Shaha, to Kishtokanth Shaha, to Oojhulmonee's son Gour Huree, and to Radhagovind, and executed a kut koala or conditional deed of sale; that Shama Churn Bosoo and Juy Huree Bosoo signed their own names; that Taramonee and Govindomonee made marks with their own hands, and that at their request their gomashita Prem Narain Mojundar, signed their names affixing his name below theirs; that Shama Churn Bosoo wrote the koala with his own hands; that no other deed was executed that day, the conditions of the sale being embodied in the deed itself; that Govindomonee and Taramonee were at the time behind the door of the koothee on the west; that when signing the koala, they put out their hands and faces and signed the koala; that plaintiff's gomashita Gopinath Shaha and Kanai Shaha brought 5 or 6 rupees in coin, and the rest in Bengal bank notes, in all rupees 12,301, into that assembly, and Juy Huree and Shama Churn took the notes and went with them to Taramonee and Govindomonee and said, "See, we have received the money;" they said they had received the money; that defendants sold the zemindaree to pay the amount of Nitai Raichand Shaha's decree of the Supreme Court; and Shama Churn and others took the bank notes and paid them into the Supreme Court. The witnesses have also identified the deed of sale by recognizing and pointing out their names in it. It is also proved that the money was paid to defendants through Gopinath Shaha. The koala contains his name, and plaintiffs have had him examined. His evidence also establishes the same facts.

"Of the three witnesses examined by Taramonee and Govindomonee, one of them, named Ramduyal Singh, has deposed in corroboration of the statements made by the witnesses named in the deed of sale. Of Dr. Lamb's three witnesses, one of these named Ram Gutee Chuckervuttee also states that he has heard that Shamachurn Bosoo and the females, whose names he does not know, executed the deed of sale; that it was to pay the 12,000 rupees due to Nitai Raichand Shaha, his employer, on account of a decree of the Supreme Court; that the kut or mortgage was given; that the decree in question has been paid; and that his employer has received the money. The *general power of attorney* which defendants, on the 16th Maug 1248, executed in the name of Hurrishchunder Dutt, which was attested by the magistrate of Calcutta, and bears the seal and signature of all the zemeendars, contains also a clear and express reference to the mortgage in question. The bybad proceedings, dated the 30th July 1842, shew that Taramonee

and Govindomonee, and Gopalkisto Dutt, and Hurrischunder Dutt, presented a petition in which they confessed to having given the mortgage. These documents confirm the evidence given by the witnesses, and leave no ground for doubting—and though Taramonee and Govindomonee deny having signed the deed of sale, alleging that, on the date affixed to the deed, Taramonee was at Kalee Ghaut, and Govindomonee at the father's house; but, of the three witnesses they have examined, Ramduyal Singh has deposed directly the reverse of these statements;—the other two witnesses are not worthy of credit, as both state that they went to defendants *seeking employment*; and one of them Nobokanth Bhoomeeck has deposed that he merely saw Juy Hurce and Shamachurn sign their names and came away; that he does not know *what transpired afterwards*. Is it not possible then that Taramonee and Govindomonee may have signed the deed after he was gone? Bhogogovind Ballo deposes indeed that they did not sign the deed; but he has stated that Govindomonee's age was 14 or 15, and Taramonee's 50 or 55 years, and Nobokanth Bhoomeeck has deposed that Govindomonee's age was 26 or 28 years, and Taramonee's 25 or 30 years. From this great discrepancy regarding their ages, it would seem that witness never saw them. Taramonee and Govindomonee have filed exhibits in the names of other witnesses, residing in Calcutta; but defendants did not appear and answer to the plaint till *eight months after the notice was served* on them. The three witnesses they have already examined, have not benefited them. And the *general power of attorney* having moreover confirmed the statements of the witnesses to the deed of sale, it seems unnecessary to examine the Calcutta witnesses, as it would only needlessly retard the decision of the case. Be this as it may, the *estate sued for has been sold*, and defendants have now no right in the estate. It must be unnecessary, therefore, to take further evidence from the defendants.

“2ndly.—Was the estate farmed to plaintiffs; and ought the proceeds of the farm to be carried to the account of the mortgage?”

“Shamachurn Bosoo has not adduced any evidence whatever. Govindomonee and Taramonee's three witnesses do not prove that plaintiffs took the farm *benamce*. Dr. Lamb's witnesses:—Bulram Poddar deposes that he is not aware whether Juykishito Shaha and Damoodar Rai are ijardars themselves; or the ijara was benamce: Ram Gutee Chukkervuttee deposes that when pergunnah Doorgapore was advertised, Nityanund and Kishitokanth Shaha, and others, agreed to buy it themselves, but they disagreed about the extent of shares each should take; the rent of the pergunnah was then paid in ready money and notes by Oteet Pundit Shaha and Golaub Shaha, through Damoodar Rai, into the collector's office, and the sale was stopped; that witness did not see the ijara pottah; he cannot tell in whose name it was taken, but heard

afterwards, that the ijara was in the name of Damoodar and Juy Kishto; that Jugunnath Shaha, the son of Nityanund, Rajchundro Shaha, the son of Rajchand Shaha, and Kishtokanth Shaha, were living in Putooatoolce Havilee, and Kishtokanth Shaha said to the others that "if you go to the sale with the intention of buying, I shall be at once ruined: much of my money is gone after Doorgapore; should you, therefore, not act the part of an enemy, I may buy the estate at a small price, and we shall become by the purchase, and by the mortgage, the proprietors of the whole, with the exception of Dr. Lamb's interests;" that witness concludes therefore that Kishtokanth Shaha and others, have an interest both in the loss and gain of the estate. Madhubchunder deposes that he has heard that Damoodar Rai and Juy Kishto Shaha farmed pergunnah Doorgapore; that they opened an account in the names of Damoodar Rai and Juy Kishto's name, in Bulram Ooddhub's dokan, and had occasional dealings with them; that witness was Bulram Ooddhub Poddar's gomashta, therefore he is acquainted with these facts; that those are owners in whose name the account exists; that witness cannot tell on whose responsibility the khata was opened. This may not be enough satisfactorily to establish that plaintiffs held the ijara, yet the benamtee has been proved in case No. 10,164, a suit between the same parties. Plaintiffs had in that case sued for the amount of a bond, and, on its being proved that the profits of the ijara were assigned over to plaintiffs in payment of the debt, the claim was in consequence dismissed. That decree proves that the estate now sued for was *let in farm to plaintiffs*, and it shows further that that ijara was not given for the liquidation of this mortgage. It only proves that the assignment was made for the debt due on the tumusook. The remainder was stipulated to be paid as moshahira to the defendant. Should defendants therefore have any claim for the moshahira in question, still as that moshahira was not assigned over by defendants, towards the payment of the mortgage, it cannot be carried to the credit of that account.

"3rdly.—Are the claims of the hissa and villages and wasilaut made by Dr. Lamb admissible?"

"Dr. Lamb's vakeel declares that only two annas of the share decreed to him has been included in the present suit, and plaintiffs have expressed their willingness to forego this share of the estate. Plaintiffs are also willing to forego the villages contended for by Dr. Lamb, on the condition, however, that as an appeal has been preferred for those villages, should the original decree be set aside, plaintiffs shall not in that case be barred from taking them; that in case the decree is confirmed, then, what has been alienated, they cannot be entitled to. The claim for *wasilaut* however made by Dr. Lamb is not admissible; for though his decree was passed before the date of plaintiffs mortgage, that decree does not bind defendant's property. Plaintiff having secured his claims by a kut or mortgage,

the mortgage secures the property, and other creditors can have no lien on the estate thus mortgaged to plaintiffs. Besides the estate has been already sold, with a reservation of the rights of the mortgage, for the wasilant in question.

"4thly.—Are defendants indebted to Sucheenundun, and others, on account of decrees of court and securities given to the collector? And if these debts exist, do they bar plaintiff's claim?

"Plaintiff's kut or mortgage is dated 11th Bhadur 1246, but the security bond given in Sucheenundun's case is dated 23d September 1839 or 8th Asseen 1246, which proves that the bond was given nearly a month after plaintiff's mortgage. How can this therefore affect plaintiff's claim? and though it appears that $1\frac{1}{2}$ anna of the estate was pledged as security for Shamachurn Bosoo's surburakarship, it has been ascertained from case No. 10,177, that two payments have been already made for his embezzlements. Should any additional claims be made against him on that account, this decree shall not bar those claims.

"It is therefore ordered, that deducting the 2 annas decreed to Dr. Lamb, and the villages otherwise decreed to him, the remaining 9 annas be decreed on this condition—that should the decree given for the villages be reversed in appeal, then plaintiff shall get possession of those villages also, and not otherwise; that the wasilant which shall be ascertained in execution of this decree, and the costs of suit in proportion to the amount decreed, shall be paid to plaintiff. That plaintiff having sued for Dr. Lamb's share without enquiry, and defendants having given the mortgage of that share inclusive, plaintiff and the Bosoo defendant shall, for these reasons, jointly pay Dr. Lamb's costs. Sucheenundun to pay his own costs."

I see no reason to interfere with the foregoing decision. I consider the execution of the deed of conditional sale to be fully proved. In addition to what is stated in the principal sudder ameen's decree, it has been established that the same bank notes with which the price was paid, and the numbers of which are marked on the deed itself, were paid to the sheriff, in satisfaction of the decree against the appellants in the Supreme Court; and that, in consequence of this satisfaction of the decree, the property, which forms the subject of the present suit, was, with others, released from attachment by the sheriff. I coincide also in opinion with the principal sudder ameen, that a claim on the part of the appellants, to any profits from a lease of their property to the respondents, cannot be regarded as the discharge of the loan received by them from the respondents, and in security for the repayment of which they executed the conditional deed of sale. The transactions must, I think, be considered, and treated, as perfectly distinct from one another. If the appellants wished to redeem the mortgage, it was incumbent on them to repay the loan. On any other principle, a lender on a deed of conditional sale, might be kept out of possession, long after

the mortgage had been legally foreclosed, and be constrained to await the result of a protracted litigation, in a separate dispute, between him and the borrower. I accordingly dismiss the appeal with costs, upholding the decree of the principal sudder ameen. It is not necessary to pass any orders on the petition of Hurrish Chunder Dutt.

THE 4TH JANUARY 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 241 OF 1843.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Shuhabad, July 26th, 1843.

UDHEEN SINGH, AND OTHERS, APPELLANTS,
(PLAINTIFFS.)

versus

SHEO SUNKER SINGH, AND OTHERS, RESPONDENTS,
(DEFENDANTS).

THIS suit was instituted, on the 28th of September 1842, by the appellants, to recover the sum of Company's rupees five thousand four hundred and ninety-five, seven annas, five pie [5,495-7-5] principal and interest, as wassilat, or mesne profits, on a sixth-share of a talooq called Midnapore, in virtue of a decree for the land obtained by them on the 7th July 1837 (1244 Fuslee). The period for which this wassilat was claimed, was from the year 1220 to 1225 Fuslee.

The common ancestor of those concerned in the case, was Nuhul Singh. He had three sons:—1. *Uchul Singh*, 2. *Bukhtour Singh*, and 3. *Kedar Singh*. In the year 1196 F. a settlement for the talooq was made with Bhirth Singh, a descendant of the eldest of these three sons, *Uchul Singh*. (1) In 1220 F. the father of the respondents, Gungaram, *alias* Surnam Singh, a descendant of the second son *Bukhtour Singh*, (2) obtained a decree for one-third of the estate against the above Bhirth Singh: and, in 1244 F. the present appellants, as descendants also of Bukhtour Singh, got one against Gungaram's heirs, for half of this third, or one-sixth of the whole,—for the mesne profits on which sixth portion, the present claim is preferred.

The principal sudder ameen dismissed the suit, because the period within which it should have been instituted under the law had expired. It clearly had so; and I affirm the judgment on the same grounds as that on which it was passed.

THE 9TH JANUARY 1845.

PRESENT :

R. H. RATTRAY,

JUDGE,

and

R. BARLOW and

E. M. GORDON,

TEMPORARY JUDGES.

CASE No. 108 OF 1843.

*Special Appeal from the order of the Principal Sudder
Ameen of Patna.*

PHOOKUN SING, AND OTHERS, APPELLANTS,

(PLAINTIFFS,)

versus

GOVERNMENT, LEELADHUR, AND OTHERS,

RESPONDENTS, (DEFENDANTS.)

PLAINTIFFS, on the 22d August 1839, brought this action for reversal of sale of 13 annas 1 pie of village Mahomedpore, pergunnah Gyaspore, made by the collector of Patna on the 6th of August 1835, for balances due to Government on account of the years 1241 and 1242 Fuslee.

They plead—

1st. That the estate was sold before the day fixed by ishtahar for sale, and within the period prescribed in the notice.

2d. That the talsceddar of pergunnah Gyaspore, Neeladhur, a Government servant, bought it, with others, in name of his nephew Keybook Lal.

3d. That Motec Sing, one of the sharers, and a farmer also, purchased beynamee.

4th. That Mahadeyoo Dutt, who bid as mookhtear on the part of the purchasers, had no powers for that purpose from them.

5th. That Kulleeanpore Dheeraj, Mahomedpore, &c., were in one talook, and could not be sold separately, notwithstanding which the collector sold 13 annas 1 pie of Mahomedpore only.

6th. That a fresh ishtahar was not issued when the sale of the 28th July of 1835 was cancelled by the collector, in consequence of the requisite deposit not having been paid in by the bidder of that day.

7th. And that the usual notice was not served on them.

The collector in his answer states that a balance of 381 rupees 1½ annas, had accrued on the mehal for 1241 Fuslee. That on the 16th of Kartick 1242, an ishtahar, fixing on the 25th Aghon following as the day of sale, was issued. That the sale was postponed, and the adjournments duly entered, on the different dates, on the original ishtahar, to the 28th July 1835; when, on failure of the bidder to make the requisite deposit, the sale was cancelled, and the mehal was again sold on the 6th August 1835, after a lapse of eight months and three days from issue of the first ishtahar. That the objection urged by the plaintiff, on the grounds that the period fixed by the ishtahar had not expired, is therefore invalid. That the beynamee purchase was not proved before the revenue authorities. That a mooklhtearnameh on the part of Mahadeyoo Dutt was not necessary. And that the mehal being under butwareh, a sale of the rights of the bakeedars, with reservation of the rights of the sharers who had paid up their revenue, is legal.

The answers of the other defendants are all in support of that given in by the collector.

On the 23d January 1841, Ojudhea Persaud Tewarce, principal sudder ameen of Patna, dismissed the plaint with costs. He was of opinion that the beynamee plea was not proved. That the sale was not made in pursuance of the ishtahar, dated 30th June 1835; but in satisfaction of balances included in former ishtahars, the dates of which are detailed in the collector's answer. That the sale proceedings of the 6th August 1835 distinctly shew this. That a mooklhtearnameh on the part of Mahadeyoo Dutt was not necessary. That no new advertisement on failure of a bidder to make the required deposit, is called for. And that as the estate was under butwareh, the sale of the bakeedars' shares separately was valid.

On the 13th of April 1842, the judge of Patna confirmed, for the reasons stated in his proceedings of that date, the judgment of the principal sudder ameen.

The applicants, being dissatisfied with the last mentioned order, preferred a special appeal to this Court, which was admitted by Mr. J. F. M. Reid on the 20th March 1843.

The Court find that the objections to the sale, on which the present action is brought, though urged by the plaintiffs in their petition of appeal to the commissioner of revenue, can in no way affect the validity of the sale proceedings now before the Court. The said petition referred to an ishtahar, dated 30th June 1835, for balances, 249 rupees 4 annas, due up to Cheyt 1242 Fuslee, and to a sale which never took place—not to the sale which did take

place, originating in the ishtahar of 30th October 1834, for balances, 432 rupees 9 annas, for 1241 Fuslee, as well as for subsequent balances, the legality of which is now, under false premises, impugned. As no plea, not urged in conformity with section 25, Regulation XI. of 1825, before the revenue authorities, can be admitted or taken up by the Court, they dismiss the appeal with costs chargeable to the appellants.

THE 28TH JANUARY 1815.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 34 OF 1814.

*Regular Appeal from a decree passed by the Principal Sudder
Ameen of Patna, September 9th, 1813.*

GOPAL DAS, GOMASITEH OF THE FIRM OF IMRUT
LAL AND LUKHUN LAL, APPELLANT (PLAINTIFF.)

versus

KHAJEH RUSOOL KHAN AND DULAWUR KHAN, SONS,
SURDAR BEGUM, BIBI JAN, FATIMUT ONISSA, AND
NEAZ BIBI, DAUGHTERS, AND
NOOR BIBI, WIDOW OF KHAJEH SHUREEF KHAN,
DECEASED, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by the appellant, on the 3d of March 1843, to recover from the respondents the sum of Company's rupees twenty-one thousand three hundred and thirty-two, and thirteen annas [21,332-13] principal and interest, due on a bond granted by the latter, bearing date the 25th of Sawun 1238 Fuslee.

The bond was drawn out in the names of all the respondents, and bore the impressions of their seals respectively, as parties to its execution; but it appeared that the debt, on account of which it had been given, was contracted by Khajeh Rusool Khan, and it did not appear that the other respondents either participated in the money advanced to him, or consented to their names being impressed on the deed, for the amount of which they were sued jointly with

him. On these grounds, a decree was passed in favor of the appellant against Khajeh Rusool Khan only, and the other respondents exempted from all further responsibility.

The appellant, dissatisfied with this decree, appealed to obtain the extension of it to the other respondents, whom he considered to be responsible equally with Khajeh Rusool Khan, against whom only it had been passed; but nothing appearing to raise a doubt of the correctness of the judgment recorded by the lower court, the same was affirmed, with costs payable by the appellant.

THE 28TH JANUARY 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 84 OF 1842.

Special Appeal from the decision of the Judge of Dacca.

MOOST. RUTTON BEEBEE, APPELLANT, (PLAINTIFF,)

versus

MOOST. RANEE GOOLAB DEYEE, RESPONDENT,

(DEFENDANT.)

THIS is a suit for the recovery of the sum of 1,600 Company's rupees, and 200 Company's rupees, lent, at different times, on the security of certain jewels left in pawn, with interest amounting to a sum equal to the principal. The loans were to have been repaid in six months as admitted by both parties. In the rate of interest chargeable they differ. The principal sudder ameen decreed the whole sum claimed to be made good by the sale of the jewels pawned if sufficient, and, if not, by the respondent by other means, with full costs.

The judge decreed, that if respondent did not pay up the amount due, principal and interest, in seven days, the jewels were to become the property of the appellant, and each party to pay her own costs.

The Court observe that the investigations in both courts were very incomplete. The two documents filed by plaintiff, appellant, are mere lists of the jewels, and both on plain paper. One of them is witnessed; but no mention how the jewels were valued, and neither so *specific* as to be evidence whether the jewels were the identical ones pawned. The Court, therefore, return the case for reinvestigation and decision by the judge himself, who is directed to

call upon the plaintiff appellant to file her books to prove the nature of the transaction as to the period of re-payment, the rate of interest, and the value of the jewels pawned, and deeds exchanged or not, and to ascertain from the money lenders the usage in such cases, and then decide, bearing in mind clause 4, section 3, Regulation II. 1805.

THE 31ST JANUARY 1845.

PRESENT:
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 169 OF 1843.

Regular Appeal against the orders of the Judge of Dinagepore.

GOBIND MONEE CHOWDRAIN, GUARDIAN OF BIRMO
MAYEE CHOWDRAIN, MINOR, WIDOW OF RAM NATH
CHOWDREE, (OTHERS ABSENT,) APPELLANT, (DEFENDANT,)

versus

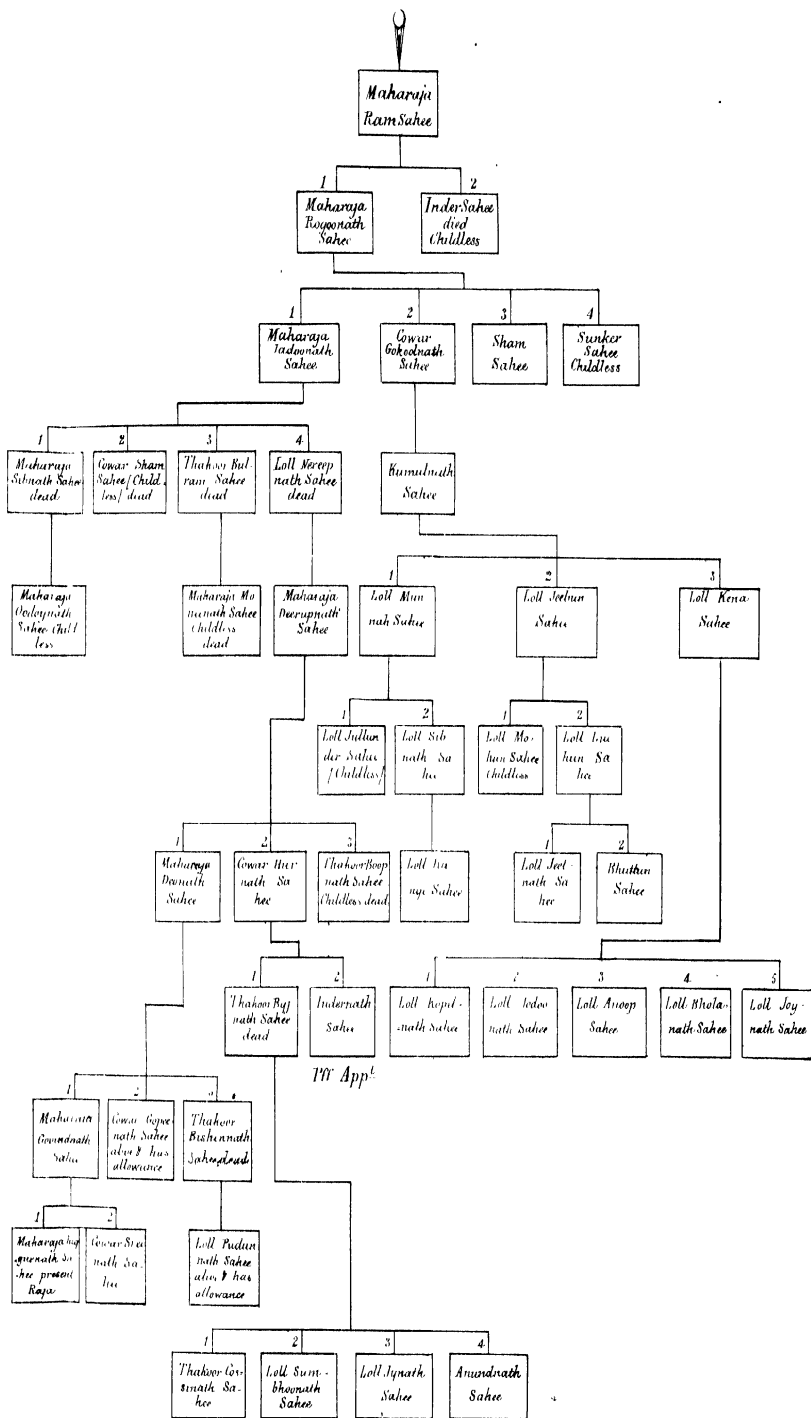
RAM ISOREE CHOWDRAIN, WIDOW OF HUR INDER-
NARAIN CHOWDREE, RESPONDENT, (PLAINTIFF.)

THIS case was brought on for hearing on the 18th and 20th September 1844, when it appeared that the property, which is the cause of action, is situated in the Poorneah and Dinagepore districts.

The judge of Dinagepore, on being called upon to state whether he had made the necessary application to this Court, for permission to dispose of the suit involving right to lands so circumstanced, in his return of the 25th September, reports no such application was made.

Under the above circumstances, the Court deem it unnecessary to enter into a detail of the grounds of action, and of the pleas urged by the defendant—and direct that the case be restored to its original number on the judge's file, by whom it will be decided with the least possible delay, after application shall have been made to the Court, and receipt of their orders, under Circular Order No. 29, of the 11th January 1839, paragraph 2.

The Court further direct that the property be placed *in statu quo* before the institution of the suit.



THE 3D FEBRUARY 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 211 OF 1843.

*Special Appeal from order of the Governor General's Agent, South
Western Frontier, at Kishenpore Chootee.*

LALA INDERNATH SAHEE DEYOO, (PLAINTIFF,)

APPELLANT,

versus

THAKOOR CASSEENATH SAHEE, SOMBHONATH SA-
HEE, JYENATH SAHEE, AND ANUNDNATH SAHEE,
(DEFENDANTS,) RESPONDENTS.

ON the 14th September 1842, Messrs. Tucker and Reid rejected a special appeal preferred by the appellant. On application for review of their judgment, it was admitted, on the 14th June 1843, by the same judges, with the view to establish a precedent in any similar cases which might hereafter be instituted.

The annexed genealogical table will serve to elucidate the circumstances of the case and to shew the relationship which exists between the litigants respectively.

The plaint was filed on the 12th July 1839, and sets forth a claim to one half of all the villages in pergunnah Sonapore, the proceeds of which are Company's rupees 5,000. The action is laid at rupees 4,300. The remainder of the lands, at rupees 700 produce, being, as it is alleged by the plaintiff, in his possession. Plaintiff states that Rajah Durapnath Sahee Deyoo gave to his father Kowur Hur-

nath Sahee Deyoo certain lands in pergunnah Sonepore, the produce of which was rupees 10,000. Hurnath Sahee gave to his two sons each 14 villages—to Bijenath Sahee, the elder, father of the defendants, 14 villages for certain house expenses and for his mother's expenses; and to plaintiff, the younger son, the same number, called the "Jereah Mehal," at rupees 700 produce. He goes on to say, his father, Hurnath Sahee, is very old, and his senses somewhat impaired; the whole of Sonepore was however by him made over to the defendants, on the death of their father Bijenath Sahee; that he is only in possession of the abovementioned 14 villages; that he has frequently applied for possession of the property in dispute summarily; and that, on the 18th May 1839, he was directed to bring a regular suit against the defendants, amongst whom he has included his own father. Plaintiff further intimates his intention to sue for personals separately.

The defendants, in answer, plead that, according to the custom of their family, the estate of the kowur, the second son of the rajah, is never divided between the younger sons; that the eldest son of the kowur, who bears the title of thakoor, succeeds to the entire estate, and that younger sons are allowed maintenance only; that 14 villages are already in plaintiff's possession and are assigned for his support;—and quote vol. vi. page 260 of the Reports of the Sudder Dewanny Adawlut, wherein the rule of succession to estates in pergunnah Palayon, in Choota Nagpore, is laid down.

The case was first heard by the principal assistant to the Governor General's agent, before whom maharajah Juggernath Sahee, the present occupant of the guddee, as well as Gundroop, Gugraj, and Kotul Sahee, entered claims to the property. On the 22d September 1840, that officer dismissed the plaint on the ground that the kowur's eldest son, the thakoor, was entitled to succeed to the guddee and to the entire estate. He also rejected the claims preferred, as above, by the parties, who protested while the case was pending before him.

The Governor General's agent, on the 23d May 1842, in appeal against the principal assistant's decision, confirmed the judgment passed by his subordinate officer; and a special appeal was, as already shewn, admitted by this Court, for the reason recorded by the judges in their proceedings of the 14th June 1843.

The case was first laid before the Court on the 28th August, subsequently on the 3d and 4th of September of last year, on the 1st February, and, again, on this date. The Court observe that the decision of this case rests entirely upon local usage and the customs of the family of the parties concerned. The appellant, in his plaint, alludes to certain decisions of the courts, establishing the law of division of ancestral property in their family, between all the younger branches. He puts in a decision of the judge of Rainghur, passed in appeal against his register's orders, in the case of

LALL KAPHILNAT SAHEE, (PLAINTIFF,) APPELLANT,

versus

LAL BEYCHUN SAHEE, (DEFENDANT,) RESPONDENT,

Decided June 12th 1830.

The Court find, the cause of action in this suit was disputed right to the share of one Nunnah Sahee, who had taken up his permanent residence at Pacheyt; and the decision in no way applies to the merits of this case.

He also puts in a fyselahi of the late provincial court of appeal at Patna, dated the 26th January 1819, in the case of

THAKOOR DOKHUN SING, (DEFENDANT,) APPELLANT,

versus

LAL DEYONATH SAHEE, (PLAINTIFF,) RESPONDENT,

which, on examination, refers to a question of allowances, and is, equally with the foregoing document, foreign to the matter now before the Court.

The Court observe further that the answer of rajah Govindnath Sahee, filed in the last mentioned case, and the report given in by his son, rajah Juggernath Sahee, the present rajah, on the 22d May 1837, in the case of

LAL PUDDUNNATH SAHEE, PLAINTIFF,

versus

THAKOOR BISHNAT SAHEE, DEFENDANT,

on requisition from the local authorities, together with the evidence on the record, are conclusive against the claim set up, and proves no division is made of the kowur's estate. It must not be forgotten that the answers of both the rajahs, who are to be looked upon as the head of the family, were given in before this action was brought, and their statements are confirmed by the witnesses for the defence, as well as, to a certain extent, by the evidence of the plaintiff. Under such circumstances, the Court cannot but uphold the judgments of the local authorities, who must be fully cognizant of the customs which prevail in the families of the rajahs under their jurisdiction; they therefore dismiss the appeal with costs. They deem it unnecessary to interfere with the claims set up by rajah Juggernath Sahee, and others, during the course of the trial; and confirm the orders which have been passed by the Governor General's agent regarding them.

THE 5TH FEBRUARY 1845.

PRESENT:

J. F. M. REID and
A. DICK,

JUDGES,
and

E. M. GORDON,
TEMPORARY JUDGE.

CASE No. 257 OF 1842.

*Regular Appeal from the decision of Doorganarain Rai, Principal
Sudder Ameen of West Burdwan.*

BABOO BEERSING DAYB, APPELLANT,

versus

MODHOO SOODUN BHOOSUN, FOR SELF, AND AS HEIR
OF HULUDUR BHOOSUN, DECEASED, RESPONDENT.

THE respondent sued the appellant, in the zillah court of West Burdwan, on the 13th September 1837, for rupees 6,665, including interest, under the following circumstances. The appellant had, between the years 1233 and 1237, borrowed from the respondent's father, on bond and otherwise, the sum of rupees 3,133-8-10 gundas. In a case which was pending between the appellant and his father, and which was submitted to arbitration, the appellant filed a schedule of his debts to mahajuns. In this schedule there was entered the sum of rupees 3,100, as principal due to the respondent's father, and rupees 930 of interest on that sum. The respondent's father filed 15 bonds before the arbitrators, and swore to the truth of the debt. The present suit was instituted to recover the above sum of rupees 4,030, entered in the schedule, and interest on the same, from the date of filing the schedule to the date of action, viz., rupees 2,635.

The appellant, in his answer, denied that he was at all in debt to the respondent. He acknowledged that money transactions had taken place between himself and the respondent's father, from the year 1126 Bishenpooree; but that, whenever he borrowed money, he discharged it by assignments on the rents of his landed property, and by pledging jewels to the satisfaction of the lender. In his rejoinder, the appellant set up a new plea: that the debt claimed by the respondent had been more than satisfied by a lease granted to him of certain lands.

On the 27th June 1842, the principal sudder ameen decreed for the plaintiff with costs, because, for the reasons stated by him, he considered the filing of the schedule by the defendant, in the case referred to, to be a full acknowledgment of the debt, and because he regarded the plea of the lease to be fraudulent. The total sum decreed was rupees, Company's, 8,557-7-2; and which may be thus specified in detail.

Principal entered in schedule, minus an authorized deduction of rupees 171, Sa. Rs.	2,929	0	0	0
Interest entered in schedule,	930	0	0	0
Interest on the principal entered in the schedule, from the date of filing the same to that of the decree,	4,165	0	0	19 gds.
	<hr/>			
	Sa. Rs.	8,024	0	0 19 gds.,

or Company's rupees 8,557-7-2 as above.

The only part of the foregoing decree, with which the Court see any reason to interfere, is that which relates to the amount decreed as interest. The item of rupees 930, as interest, entered in the schedule, cannot be allowed. The Court decree the principal, or rupees 2,929, with a like sum as interest up to the date of suit, together with interest on the principal from the date of suit up to that of the decree, and interest on the whole amount decreed up to the date of payment. Thus modified, the Court confirm the decision of the principal sudder ameen, awarding costs in proportion to the amount decreed.

THE 5TH FEBRUARY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 196 OF 1843.

*Regular Appeal from a decree passed by the Additional Judge of
Tirhoot, May 5th, 1843.*

RAJAH RAM NURAIN SINGH, AND DHURM NURAIN
SINGH, APPELLANTS, (DEFENDANTS,)

versus

BYJNATH SAHOO:—ON HIS DEMISE, THE COLLECTOR OF
SARUN (COURT OF WARDS) FOR GOKUL DAS, AN IDIOT,
NEPHEW OF THE DECEASED, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by the deceased plaintiff, Byjnath Sahoo, on the 29th of May 1829, to recover from the appellant the

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sum of Company's rupees three thousand and five, five annas, and four pie, [Co.'s Rs. 3005-5-4,] principal and interest, due on a burmanâneh, or mortgage bond, granted to the said plaintiff by Durg Bejye Singh, father of the appellants, on the 17th of Ughun 1227 Fulsce, corresponding with the 19th November 1819 A. D.

The bond acknowledged the receipt, as a loan, of fifteen hundred Sicca rupees, to be repaid in five years, with interest at the rate of 1 per cent per mensem; and assigned the rents of half of the villages of Bhyra and Beerpoor, till the debt should be satisfied.

The additional judge, on a comparison of the accounts, filed by the parties, submitted by deputed ameens, and called for by the court, determined that the sum of Company's rupees nine hundred and fifty-one, six annas, five pie, six krants, and fourteen musants [Co.'s Rs. 951-6-5-6-14] was due to the plaintiff; and decreed this, with costs, against the appellants.

I affirm the decree, on the grounds on which it was passed; with costs payable by the appellants.

With reference to the length of time this case was pending in the courts, I find, that it was originally decided by the zillah court on the 18th of December 1829; adjudging to the plaintiff Sicca rupees two thousand six hundred and seventy five [Sa. Rs. 2,675]; but, on the 2d of July 1833, the provincial court of Patna reversed this decision, and directed the deputation of an ameen to make a local enquiry into the actual produce of the lands during the period they were held by the mortgagee, and the further examination of putwaraes' accounts, with whatever else might strike the judge as calculated to elicit a true exposition of the facts required to be known. The difficulties and interruptions occasioned by such a mode of proceeding, appear to have been frequent, and to have caused the delay which occurred in the final disposal of the case.

THE 13TH FEBRUARY 1845.

PRESENT:

A. DICK,

JUDGE.

CASES Nos. 116 AND 235 OF 1843.

Special Appeals from the decisions of the Zillah Judge of the 24-Pergunnahs.

FUZZL KUREEM, AND OTHERS, APPELLANTS,

versus

KALEE PURSHAD MOOKERJEEAH, RESPONDENT.

THESE cases are sent back for trial, because the judge erred in supposing that the question of right had been decided in the former

case appealed to this Court, and the zillah judgment confirmed; and on which account alone he decided against the appellants.

The zillah judge is directed to replace the cause again on his file, and to depute a properly qualified person to ascertain the boundary between the two pergunnahs belonging to the parties respectively, and prepare a correct map thereof. He will also send for the several documents in original from the collectorate, copies of which are filed by the parties, and examine them, and the dates of their presentation in the collector's office, and, after taking any other proofs the parties may wish to produce, decide.

THE 17TH FEBRUARY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE,

and

R. BARLOW and

E. M. GORDON,

TEMPORARY JUDGES.

CASE No. 22 OF 1844.

Special Appeal from order of Principal Sudder Ameen of Tirhoot.

BHOG RAJ THAKOR, (DEFENDANT,) APPELLANT,

(HURNATH CHOWDREE ABSENT,)

versus

FUTTEH CHAND SAHOO, (PLAINTIFF,) RESPONDENT.

A SPECIAL appeal was admitted by Mr. Tucker, on the 21st November 1843, on the ground that the principal sudder ameen's decision of the 20th April 1843, in which a sale made by Hurnath Chowdree to Bhog Raj Thakor was declared illegal, was opposed to the Court's construction, dated the 8th April 1831, No. 588.

We are of opinion that the decision of the principal sudder ameen must be upheld. The construction referred to by Mr. Tucker supposes a *bonâ fide* sale to have been made. The principal sudder ameen declares in the case that no sale was in reality made, and that it is merely a plea set up collusively by the alleged seller and buyer, in order to prevent the sale in satisfaction of decree. Under

Act III. of 1843 this Court cannot interfere with what has been established as facts in the courts below; and the opinions of the principal sudder ameen with respect to what is the fact must be held to overrule that of the sudder ameen, who possesses an inferior jurisdiction.

The Court reject the appeal with costs, confirming the decree of the principal sudder ameen.

THE 17TH FEBRUARY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE,

and

R. BARLOW and

E. M. GORDON,

TEMPORARY JUDGES.

CASE No. 23 OF 1844.

*Special Appeal from the order of the Principal Sudder Ameen
of Behar.*

KEERUT SING, (DEFENDANT,) APPELLANT,

(SOBHUN SING, AND OTHERS, ABSENT, IN APPEAL,)

versus

OMADHUR BHUT, AND OTHERS, (PLAINTIFFS,) RESPONDENTS.

THE plaintiffs obtained a decree against Sobhun Sing for 176 rupees 14 annas, in the court of the moonsiff of Behar, in satisfaction of which the sale of 3 annas 4 dams, Sobhun's share, in the village Adamapore, pergunnah Nirlhut, was directed. In accordance with that order the collector sold the estate, and it was purchased for 80 rupees by the decree holders. Plaintiffs allege they got possession of their purchase through the collector's nazir, and were subsequently ousted by the defendant, Keerut Sing, against whom, as well as against Sobhun Sing, the present action, for possession and mesne profits of 1249 Fuslee, was brought on the 15th March 1842.

Sobhun Sing, and others, in answer, admit that plaintiffs purchased and got possession of the property at sale as set forth in the plaint. They urge they are not parties to the dispossession of the plaintiffs; and further urge that Keerut is responsible, if he has ousted them.

Keerut Sing, in answer, pleads that in 1238 Fuslee, Sobhun, and others, received advances to the amount of 400 rupees from him, and put him in possession of the lands, a farm of which he took from 1239 to 1247. Under agreement he was to hold till his debt was discharged; that plaintiffs are not entitled to possession till his claim is satisfied; that plaintiffs never had possession; and that they are only entitled to the rents due to the former proprietor, whose right and title only devolved on the plaintiffs, the purchasers at sale.

The plaintiffs, in their reply, impugn the documents on which Keerut founds his mortgage claims. They urge previous claim of 1228 Fuslee, on an instalment bond given to them by Sobhun Sing, which they state, was, under the order for execution of decree above referred to, to be first discharged; and plead that, no appeal having been preferred against that order, it is final.

The moonsiff, on the 23d January 1843, recorded his opinion as follows:

It is clear from the statements of both parties that the defendant Sobhun had a 3 annas 4 dains share in village Adampore, which is now in the other defendant, Keerut Sing's possession, on advances made by him to the extent of 400 rupees, partly on mortgage and partly on bond, as proved in this court's proceedings of 22d September 1840, in execution of decree. Plaintiffs, on the other hand, do not prove they ever had possession. Sobhun the defendant was only entitled to rents [10 rupees 8 annas] from Keerut Sing, till the latter's claims were discharged. The plaintiffs bought only the rights of Sobhun Sing, and are entitled to receive the above amount of rent only, till Keerut Sing's entire demand is paid; ordered as above; and, further, that when plaintiffs pay the amount due on advance, and on bond by Sobhun to Keerut, they may get possession of the lands in litigation.

The principal sudder ameen, in appeal, on the 13th May 1843, passed judgment in favor of the appellants, original plaintiffs, and directed they should be put in possession.

He was of opinion that as the order of the moonsiff, in the case of execution of decree, provided for the payment of Keerut Sing's claim, as well as for the amount decreed to the plaintiffs in that case, Keerut's rights, on his advances to Sobhun Sing, were not reserved at the time of that sale; and, consequently, that Keerut Sing's pleas now urged to prevent possession being given to the plaintiffs are not good;—and ordered possession, with mesne profits from date of plaint, to be given to plaintiffs, charging costs in both courts to Keerut Sing.

A special appeal was admitted by Mr. Tucker, on the 12th December 1843, to try the question of the purchaser's right to oust the mortgagee.

The Court find that, in the court of first instance, the mortgagee's claims were fully recognised, and formed the ground on which judg-

ment was given in his favor. The principal sudder ameen, without pronouncing definitively on their rights, on which the defence was founded, and without any enquiry into their validity, decreed in favor of the plaintiffs, assigning, as his reason for so doing, that Keerut, the mortgagee's rights, were not reserved when the sale was made in execution of decree against Sobhun Sing. In the opinion of the Court the grounds on which the principal sudder ameen decided are not sufficient; inasmuch, as he was bound to try and pronounce judgment upon the rights of the party alleging himself to be mortgagee. As this point has not been enquired into, the Court direct that the case be returned to the principal sudder ameen, to be restored to its original number on his file; and that he be instructed to investigate the rights of the alleged mortgagee and decide accordingly.

THE 19TH FEBRUARY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 61 OF 1844.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Bhagulpore, November 27th, 1843.

RAJAH BIDYANUND SINGH, AND KONWUR ROODUR-
NUND SINGH, APPELLANTS, (PLAINTIFFS,)

versus

RAMDYAL SINGH, UNCLE AND GUARDIAN OF TILUK-
DHAREE SINGH AND RUNJEET SINGH, MINORS, SONS
AND HEIRS OF GOORDIALSINGH DECEASED, RESPONDENTS,
(DEFENDANTS.)

THIS suit was instituted by appellants, against Goordial Singh, on the 21st of April 1840, to recover possession of certain lands known by the name of "Chuck Chundpore *alias* Kutturmul," situated in pergunnah Phurkea, zillah Bhagulpore, with mesne profits, during the period of dispossession, amounting, with interest, to Company's rupees thirty-six thousand nine hundred and ninety-five—(36,995.)

On the 14th of December 1840, a decree in favor of appellants was passed by the principal sudder ameen; but in appeal to this Court, (Mr. James Shaw presiding,) the judgment was set aside as founded on insufficient evidence, and a fresh investigation ordered, with liberty to the parties to file particular deeds and documents; and an ameen directed to be deputed to make local enquiries as to the site and boundaries of the contested lands. The result of this was a clear exposition of the incorrectness of the judgment cancelled, and the decision rejecting the claim of appellants, now before the Court.

Concurring in opinion with the principal sudder ameen, that the lands claimed by appellants have been clearly proved, both by oral and documentary evidence, to form a portion of the family estate of the respondent's wards, I affirm the decisions passed by the lower court, with costs payable by appellants.

THE 20TH FEBRUARY 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 28 OF 1843.

Special Appeal from the decision of the Judge of Nuddeah.

RAJ KOONWAREE KIRPA MAYEE DIBEEAH,

(PLAINTIFF,) APPELLANT,

versus

RAJAH DAMOODHUR CHUNDUR DEYB, AND OTHERS,

(DEFENDANTS,) RESPONDENTS.

THE plaintiff sues for a portion of an allowance, granted by her father's grandfather to his younger sons, in lieu of any share in his landed property, left wholly and solely to his eldest son, in succession to her mother, deceased, who succeeded her son.

The defendants contend that the allowance in question was not intended for females, as is evident from the deed granting the allowance. In it no mention is made of the grantor's own daughters then alive, and no provision made for any of three daughters of one

of his deceased sons, though a portion of the allowance is granted to the adopted son of that very son.

The principal sudder ameen, on the 8th July 1838, dismissed the claim on the reasoning in the defence; and the judge, concurring in opinion with the principal sudder ameen, confirmed his decision in appeal, on the 10th September 1842.

The Judges of this Court admitted the special appeal, on the 4th January 1843, not being satisfied with the grounds on which the lower courts decided; the point under discussion being novel.

The Court find that the property in question is decidedly heritable, having in several instances been inherited in the usual manner. Therefore, as Moost. Neel Sursuttee inherited from, and through her son, and not from her husband,—according to the Hindoo law of inheritance, her daughter is not heir after her; the sister never being heir of her brother.

The Court consequently uphold the decisions of the lower courts, and dismiss the appeal with costs.

THE 20TH FEBRUARY 1845.

PRESENT :

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 83 OF 1842.

*Special Appeal from the decision of Mr. W. H. Martin, Officiating
Judge of Zillah Sylhet.*

GUNGA RAM DASS AND OTHERS, APPELLANTS,

versus

MUSSUMAT KISHOREE DOSSEE, WIFE OF BRIJGOBIND
DASS, DECEASED, ON HER OWN PART, AND AS GUARDIAN OF
KASHEENATH, HER MINOR SON, SHOOMBOOCHUNDER
DASS, AND OTHERS, RESPONDENTS.

THE appellants sued the respondents, in the zillah court of Sylhet, on the 3d August 1840, to recover possession of the lands enume-

rated in the plaint, under the following circumstances. Chand Rai, Beyjnath Rai and Soobhoodhee Rai were the grandsons of three full brothers. Chand Rai was the proprietor of the property under dispute. He died without leaving a son. He left, however, Apoorba, a widow. Had Beyjnath, or his son Brijnath Rai, survived her, they would have been the heirs of Chand Rai, but she survived them, dying on the 16th Magh 1228; the appellants, who are the grandsons of Soobhoodhee Rai, being her legal heirs. Beyjnath Rai had a daughter, Kishoree Dasee, who was married to Brijgobind Dass. This latter, and his brother, Oodaichund, on the death of Apoorba, laid claim to the disputed lands, alleging that they had acquired them by purchase from Bhobunnissary Dasee, the second wife and widow of Beyjnath, she selling the above lands to the above parties, together with other lands belonging to her husband. Of the above lands they contrived to get possession in 1236, and the present suit was instituted against their heirs.

In answer, the respondents replied as follows: Beyjnath was the near relation of Chand Rai, and they lived in partnership. At the death of the latter, which happened 60 years before the institution of the suit, Beyjnath succeeded as heir, the widow of the deceased receiving maintenance from him. He had his name registered as proprietor in the collector's books, without opposition, and all along continued in possession, paying the Government revenue. Thus the appellants' claim was barred by the rule of limitation. The deed of sale by Bhobunnissary had been upheld, as lawful, by a final decree of court; and the present suit was, accordingly, contrary to Section 16, Regulation III. of 1793.

The principal sudder ameen, on the 11th February 1841, dismissed the suit, with costs, chiefly on the ground that, in a former case, the judge had confirmed a decision of a moonsiff, by which the deed of sale by Bhobunnissary was upheld, and in that deed the disputed lands were included.

The officiating judge, on the 19th August 1841, confirmed the foregoing decree, both for the reason given in that decree, and because it appeared, from the proceedings, that the appellants' suit was barred by the rule of limitation.

This case was admitted to a special appeal by Messrs. Tucker and Reid, on the 2d March 1842, that the point might be tried, whether Bhobunnissary had a right to transfer her husband's property, or had merely a life interest in the same. The Court are of opinion that, unless it had been established by indisputable proof, that Beyjnath acquired this property legally from Chand Rai, during the life of the latter, (and there is no proof whatever of this,) Apoorba, the widow of Chand Rai, must be regarded as his legal heir. The fact of the registration of Beyjnath's name in the collector's books, cannot be considered as giving him a title of right to the disputed lands. The Court, proceeding upon the principle thus laid down by them,

recognise the appellants as the rightful heirs from the date of Apoorba's death; and the only question remaining to be disposed of, is, whether their right is barred by the rule of limitation. The Court are of opinion, that the purchase from Bhobunissary cannot be regarded as otherwise than fraudulent. Bhobunissary had no right to the lands sold by her; and the Court conceive, that this fact must have been known both to her and the purchasers, otherwise a sale was altogether unnecessary, the purchasers being her natural heirs. The Court, therefore, pronounce this sale and purchase to have been effected in bad faith, and the title of the purchaser, as founded on fraud, to be null. Though it should be admitted, that the actual purchasers remained 12 years in undisputed possession of the lands which form the subject of this suit, (a fact which is not proved,) yet, as their heirs have confessedly not held undisputed possession for the above period, and as the law of limitation which governs this case, is, in the opinion of the Court, the period of 60 years, as laid down in Section 3, Regulation II. of 1805, they decree for the appellants, with costs and mesne profits, reversing the decision of the judge. They consider also, that the lands decreed by the judge in his decision, dated the 8th March 1839, in the case of Oodey Chand Doss, and others, appellants, *versus* Gunga Rai, and others, respondents, are included in the present decree, the judge merely giving possession of the parcel of land, which then formed the subject of litigation, and not pronouncing on the question of right, but, on the contrary, authorising the respondents to sue for their right to the property of Chand Rai.

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THE 20TH FEBRUARY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 60 OF 1844.

*Regular Appeal from a decree passed by the 2d Principal Sudder
Ameen of Tirhoot, November 13th, 1843.*

BABOO MUNOORUTH SINGH, (DEFENDANT,) APPELLANT,

versus

GYAN CHUND SAHOO, LALJEE SAHOO, KEWUL KISH-
UN SAHOO, AND TEETA RAM SAHOO, SONS OF OODYE
RAM SAHOO, (PLAINTIFFS,) RESPONDENTS.

THIS suit was instituted by respondents, on the 13th January 1842, to recover from appellant the sum of fifteen thousand three

hundred and sixty-seven Company's rupees and one anna [Co.'s Rs. 15,367-1,] under an ikrarnameli, bearing date the 22d Assin 1237 Fuslee, corresponding with 15th October 1829 A. D., which ikrarnameli, acknowledging a debt to Oodye Ram Sahoo, the father of respondents, by appellant, of fourteen thousand Sicca rupees, promised payment of the same on the 30th Bhadoon of the same year, or, in failure, possession of the estate of Hurpoorbhindee from 1238 to 1248 Fuslee, on conditions specified; which possession was duly given.

On the 14th October 1841 (1249 Fuslee) appellant, by a summary judicial order, was restored to possession of his estate; and, on this, the present action was instituted by respondents, on the plea of the usufruct of the lands held by them having merely satisfied the interest of appellant's debt; the full principal sum of which was still their due. The validity of the ikrarnameli, under which the claim was preferred, was disputed by appellant; but the execution, and subsequent registry of it, in the presence, and with the assent of appellant, were clearly proved. The remaining points of enquiry were matter of account. It was established to the satisfaction of the lower court, that the interest of the loan only had been liquidated; and the full amount of the principal was decreed, with costs payable by appellant.

I affirm the decree, on the same grounds as those set forth; with the additional costs incurred, payable by appellant.

THE 20TH FEBRUARY 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 59 OF 1844.

*Regular Appeal from a decision passed by the 2d Principal Sudder
Amcen of Tirhoot, November 13th, 1843.*

BABOO MUNOORUTH SINGH, (PLAINTIFF,) APPELLANT,
versus

GYAN CHUND SAHOO, LALJEE SAHOO, KEWUL KISH-
UN SAHOO, AND TEETA RAM SAHOO, SONS OF OODYE
RAM SAHOO, (DEFENDANTS,) RESPONDENTS.

THIS suit was instituted by appellant, on the 9th April 1842, to recover from respondents the sum of seven thousand two hundred and

ninety-six Company's rupees, and four annas and four and a half pie [Co.'s Rs. 7,296-4- $\frac{1}{2}$] principal and interest, being the amount collected by respondents in mouzah Hurpoorbhindee beyond what was their legal due under an ikranameh, by virtue of which the lands were held.

The parties in this suit are those in No. 60, decided this day; and the dismissal of the present claim necessarily followed the decree passed in that case. The numbers of the cases, respectively, should have been transposed.

THE 22D FEBRUARY 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 127 OF 1840.

*Regular Appeal from the decision of Seydul Sudurul Hossein Khan,
Principal Sudder Ameen of Zillah Rungpore..*

ISHURCHUNDER SURMA CHOWDRY, AND AFTER HIS
DEATH, BIJAIA DIBBYA CHOWDRAIN, THE MOTHER
OF NUBEENCHUNDER RAI, MINOR, APPELLANT,

versus

SHEOPERSHAD DIUR, AND OTHERS, RESPONDENTS.

THE respondents state, that Fukeerchund and Komullochun Dhur, (whose heirs they are,) were brothers, and in partnership. They used to make advances to Keerut Chunder Chowdry, the father of the appellant Ishurchunder Surma. Keerut Chunder, on the 17th of Assin 1236, executed in favor of Komullochun Dhur, an instalment bond, for Sicca rupees 13,597, this sum being the adjusted balance then due to the brothers, for previous advances, on account of revenue payments. The respondents allege that, after crediting the appellant with sums paid, from time to time, by Keerut Chunder, during his life, (and which payments were all duly noted on the back of the deed, when made,) there remained, on the 14th Bysakh 1246, a balance of principal and interest, amounting to Company's rupees 11,821, 15 annas. For the recovery of this sum, the respondents instituted the present suit, in the zillah court of Rungpore, on the 26th April 1839.

The appellant, Ishurchunder, answered in substance, thus: that the instalment bond amounted to the sum entered in it, only by the accumulation of excessive interest on sums previously due by his father; that much more had been paid towards the discharge of the bond, than is acknowledged by the plaintiffs; and that if the sums constituting illegal interest, and the unacknowledged payments to account, were deducted, it would be found, that there was not any balance due.

The principal sudder ameen, on the 18th February 1840, decreed in favor of the plaintiffs for Company's rupees 10,455-10-7, (the half of this being principal, and the other half interest,) together with costs, in proportion to the amount decreed. His grounds are chiefly these: that as the bond is admitted, and payments on it were made, the plea that the amount is made up of illegal interest, cannot be upheld; and that on an examination of the plaintiff's books, it does not appear that more had been paid, in redemption of the bond, than the amount which is admitted by the plaintiffs to have been received.

I see no reason to interfere with this decree. The instalment bond must be looked on as a *new* obligation incurred by Keerut Chunder. The mode of adjusting old accounts adopted in this case, is very common, and is allowed in the courts. But, in the great majority of cases, these instalment bonds would become null and void, if the courts entered into an examination of the interest legally due before the date of this kind of bond, inasmuch as such an examination would generally include a period extending beyond 12 years from the original date of action, and would thus bar suits brought to enforce payment of the bond. With respect to the second plea of the appellant in this case, I am of opinion that the utmost strictness of proof, in support of the alleged unacknowledged payments to accounts, is necessary. I should have no hesitation in rejecting such a plea, unless the alleged payments are duly noted on the back of the bond, or he who asserts he made such payments, can produce genuine receipts, in proof of the payments. In the present case, neither kind of proof was forthcoming. I reject the appeal with costs, confirming the decree of the principal sudder ameen.

THE 24TH FEBRUARY 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 186 OF 1841.

*Regular Appeal from the decision of Mr. James Reily, Principal,
Sudder Ameen of Dacca.*

MUDDUNMOHUN CHUND, AND AFTER HIS DEATH, SHOOK-
MAI CHUND, HIS SON, APPELLANT,

versus

GHAZEE OODEEN MOHUMUD, NUWAB OF DACCA, AND
KHEYRATEE, JUMADAR, RESPONDENTS.

THE appellant states, that the respondent, the nuwab of Dacca on the 11th Cheyt 1242 B. S., executed a bond for Sicca rupees 7,521, in favor of Kheyratee Jumadar, on account of the price of clothes, and other articles, purchased by him for the nuwab. Kheyratee was due to the appellant, rupees Sicca 4,835; and, in liquidation of this debt, and for rupees 1500 in cash, sold the above bond to the appellant, executing a deed of sale on the 3d of Poose 1245. The appellant sued the nuwab on the bond, in the zillah court of Dacca, on the 21st December 1838.

Syed Ufzul Allee, the manager of the nuwab's affairs, answered, that the nuwab is notoriously a man of weak intellect, and constantly in a state of intoxication. He has been in the hands of low and unprincipled people, who have plundered him. Kheyratee was his servant, on a salary of 5 rupees a month. The bond is not a bona fide executed deed. Whence could Kheyratee get credit, to the extent of the value of the articles, alleged to have been purchased by him? and, supposing those articles had really been purchased, there would have been some account of them in the nuwab's office, and Kheyratee would also have kept an account of the articles in detail. The suit is a collusive one between Muddunmohun Chund and Kheyratee.

On the 5th June 1839, the principal sudder ameen dismissed the suit with costs.

On the 23d May 1840, Mr. Tucker sent back the case, that Kheyratee might be included as a defendant, and inquiry made, as to what the alleged articles were, who supplied them, and when, and at what prices?

The principal sudder ameen, on the 22d April 1841, dismissed the suit, making the nuwab's expenses payable by the plaintiff; and Kheyratee's by himself. The grounds of this decision were, chiefly, that the nuwab was proved to have been entirely in the hands of Kheyratee; that he executed the deed when in a state of intoxication; and that no proof was forthcoming, whence the articles alleged to have been supplied by Kheyratee, had been procured.

Seeing no reason to interfere with this decision, I confirm it, and reject the appeal, with costs.

THE 26TH FEBRUARY 1845.

PRESENT:

R. II. RATTRAY,

JUDGE.

CASE No. 68 OF 1844.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Behar, November 29th, 1843.

SYUD ABDOOLLAH, (PLAINTIFF,) APPELLANT,

versus

SOHUN SINGH, AND OTHERS, (DEFENDANTS,) RESPONDENTS.

THIS suit was instituted by appellant, on the 3d September 1841, corresponding with the 2d Assin 1249 Fuslee, to recover from respondents the sum of Company's rupees thirteen thousand six hundred and seventy-six, and twelve annas, and nine pie [Co.'s Rs. 13,676-12-9], the amount value of produce of a 4 annas share of mouzali Oopundeh-purouta-gungta, of which respondents had undertaken and conducted the management from 1229 to 1239 Fuslee.

There was no deed in support of the claim, shewing either the trust to have been made by the appellant, or undertaken by respondents; and it was admitted, that the transaction was altogether dependent on a verbal communication between the parties; while it was clearly established by respondents' evidence, that, during the entire period named, there were resident agents on the part of the appellant, acting on his behalf, and conducting in all respects the management of his portion of the lands.

The claim was consequently dismissed, with costs payable by appellant; and, on the same grounds, the decision was affirmed in this Court.

THE 27TH FEBRUARY 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 148 OF 1843.

*A regular Appeal from the decision of the Principal Sudder Ameen
of Zillah Backergunge.*

KASHEE CHUNDUR MOOKERJEEAH, (DEFENDANT,)

APPELLANT,

versus

- | | | | |
|---|---|---|------------------------------|
| 1 | HUR CHUNDER RAE, | } | (PLAINTIFFS,
RESPONDENTS, |
| 2 | SREE ANUND MAYEE DIBEEAH,... | | |
| 3 | SREE ANUND POORNA DIBEEAH,
[WIDOWS OF KISHUN KANT RAE,
AND MOTHERS OF DOORGA CHURN
RAE, MINOR,] | | |
| 4 | JUGMOHUN RAE, [SON OF KEWUL
KISHEN RAE,] | } | (DEFAULTERS,
RESPONDENTS, |
| 5 | SREE ANUND MAYEE DIBEEAH,
[GUARDIAN OF CHUNDUR MOHUN
GUNGOLEE, MINOR, HEIR OF SREE
CHUNDUR MOLA DIBEEAH,]... | | |
| 6 | SREE SHEOO NARAIN RAE,..... | | |
| 7 | ISHWUR CHUNDUR RAE,[SONS OF
KIRTEE CHUNDUR RAE,] | } | |

and

8 RADIIA KISHUN GUNGOLEE, (DEFENDANT,)

RESPONDENT.

THE plaintiffs in this case sued to cancel an auction sale by the collector for arrears of revenue, so far as regarded their shares, on the grounds that the joint estate being under butwara or division, and they having paid up their own shares, the sale with respect to

them was illegal. Further, that the sale was irregular; due notice or proclamation of it not having been published; and, lastly, on account of some of the defaulters being the real purchasers under fictitious names.

The principal sudder ameen deeming the above points proved, cancelled the sale of the estate, and made the costs payable by the purchasers, and those proved to be in possession; also mesne profits; and saddled them likewise with the costs of the collector; and ordered the remainder of the defendants to pay their own costs.

One of the purchasers, Kashee Chundur Mookerjeeah, appealed from that decision, on the pleas, that the shares of the plaintiffs were not in butwara at the time the arrears became due; that they had not paid up their respective shares; that even if the purchase had been made under a fictitious name, it was not on that account liable to be annulled; and lastly, that the order regarding re-payment of the purchase money, and the payment of costs and mesne profits, were inequitable and contrary to law.

Four of the original plaintiffs responded: and they contended, that the estate being under butwara, and they having paid up their portions of the revenue, and their shares having been long distinctly and specifically registered in the collector's office, and an order for butwara regarding them previously passed by the collector, they should have been exempted from sale.

JUDGMENT OF MR. A. DICK.

I would not confirm the sale with regard to the share of the respondents Hur Chunder and of Radha Kishen Gungolee. It is on record, that Hur Chunder petitioned the collector to have his name registered for a specific share, and to pay a certain amount of revenue in 1229 B. *Æ.*, and obtained an order for the same on the 25th March 1834 A. D.; from which time he was allowed to pay his revenue separately. In that very petition he also said, that the estate was under butwara with respect to other shares, and that it was necessary that his share should be likewise. The collector ordered the "usual" notice to be issued for objectors to appear, and inquiry to be instituted as to any balance being due for the share; and no objectors appearing, and no balance being due, an order was passed for his name to be registered as a specific shareholder, and for him to pay his revenue separately. I admit that the petition not having been attested by four witnesses, was under Section 4, Clause 2, Regulation XIX. 1814, illegal and irregular; but so were the receipt of it by the collector, his issue of the notice on it, and his order to consider him virtually as a separate shareholder.

The petition was indubitably for a separation; for being registered as a separate shareholder of a specified portion; and to pay separately a specific amount of revenue, in fact, tantamount to one for

"butwara," or authorised separation; and so were the orders on it, and thus understood by the petitioner, who thenceforth considered himself safe, otherwise he would never have remained silent and content for years.

It is true, he petitioned again for butwara in 1838, when he found his share was not considered separate by the authorities, and was consequently in jeopardy; but that does not prove that he had not till then considered himself secure by the former petition and order of 1229 B. A. and 1834 A. D. Under these circumstances, I am clearly of opinion that the respondent Hur Chunder was entitled to the same consideration as was extended to two other co-sharers, Ruttun Kishen and Kalee Kunkur, by the commissioner, who, on learning that these two had obtained orders for butwara, or separation, several years before, and had paid their revenue separately, excluded them from sale. And the collector should have brought this case of Hur Chunder to the notice of the commissioner, when he received the above order for exclusion of the co-sharers. Considering therefore the proceedings of the collector as irregular and illegal, which deceived and lulled into security the respondent Hur Chunder, I would decree in his favor.

With respect to the share of Radhakishen, he purchased the share of Soomboonath and Doorga Churn, on the 26th September 1836, at a public sale by the collector, by order of the court, the portion of the share being expressly specified, and his name was registered in the collector's office as such separate shareholder, and he paid his revenue separately. His share was therefore virtually separate, and admitted as such for years by the collector, and, in the spirit of Section 33, Regulation XIX. 1814, should have been excluded from the sale. He too, having been deceived and, lulled into security by the irregular and illegal conduct of the collector, who should not have registered his name for a specific share, or allowed him to pay his revenue separately, without considering the share to be under butwara and safe from sale for arrears of conjoint shares, should be absolved from the consequences of the sale. In all other points I concur with the other judges.

JUDGMENT OF MESSRS. REID AND BARLOW.

The points appear to be the following: were the plaintiffs joint sharers in the estate at the period for the balances of which it was sold by the collector?

Was their share included in the butwara referred to in the Sudder Board's letter of the 18th April 1823 to the acting collector of Backergunge?

Was the sale irregular in consequence of its taking place twenty days only, after receipt of the commissioner's order of the 17th June 1839, or 4th July of the same year?

1st.—The collector's sale proceedings of the 24th July 1839 show that it was made for balances

Of 1241 B. S. corresponding with 1834-35 A. D.,
 Of 1243 ditto corresponding with 1836-37 ditto,
 Of 1244 ditto corresponding with 1837-38 ditto,
 Of 1245 ditto corresponding with 1838-39 ditto,

whilst the plaintiff Hurchunder Roy's petition to the collector for a butwareh bears date 19th September 1838, from which it is evident that the plaintiff was equally with his co-sharers liable for the previous balances of Government accruing on the estate.

2d.—On comparing the list of names referred to in the Sudder Board's letter above indicated, with the names recorded in the original plaint filed in this case, we find no mention of the plaintiff's names made in it.

3rd.—The collector's roobukaree of the 14th March 1839 records the sale took place 24th July 1839, in pursuance of notices issued in former dates, not in consequence of the commissioner's proceedings of the 17th June of that year.

The respondent's vakeel urges that Hur Chunder on the 15th September 1832 applied to the collector for a butwareh. On a perusal of his petition of that date we find that, while stating the necessity of an application on his part for a butwareh, he confined however his prayer simply to the registration of his name as a sharer of 13 gs. 1 c. 1 k. in the registry of mutation. The petition was not drawn out in conformity with Clause 2, Section 4, Regulation XIX. of 1814, nor were orders then issued for the deputation of an ameen for the purpose of effecting a butwareh. Under the above circumstances, we are of opinion that the grounds on which this action was brought, viz. that the estate was under butwareh and consequently not liable to sale, are not tenable; we therefore reverse the decision of the principal sudder ameen and dismiss the plaint with costs.

We observe the principal sudder ameen, though he reverses the sale, has charged the costs of Government to the sale purchasers and has ordered restoration of possession without providing for the re-payment of the purchase money to the sale purchasers. We are of opinion that it was incumbent on the principal sudder ameen to secure the return of the amount purchase, and to charge the costs against the Government, as he held the sale to be illegal.

THE 28TH FEBRUARY 1845.

PRESENT :

A. DICK,

JUDGE.

CASE No. 110 OF 1842.

Special Appeal from the decision of the Superintendent of Cachar.

GHOOLAM JEELANEE, APPELLANT,

versus

MOOST. SUNDUL, AND OTHERS, RESPONDENTS.

THE appellant instituted this suit, claiming the restoration of the respondents, whom he alleged to be his slaves, and who had been enticed away from him, and who cohabited with another person.

The lower court deeming the allegation of plaintiff proved, decreed in his favor. The respondents appealed; and the superintendent, on the ground that the very fact of the respondents' leaving appellant evinced his misconduct to them, and because one of them, the daughter of Moost. Sundul, had entered into marriage (nikah) with the person with whom they cohabited, and had brought forth a son to him, considered the claim could not, and should not be enforced, and therefore reversed the decision of the lower court.

A special appeal was admitted, because the superintendent had decided without going into the evidence adduced for his claim by plaintiff.

By Section 2, Act V. 1843, the Court are prohibited to enforce any rights arising out of an alleged property in the person and services of another as a slave; consequently dismiss the appeal and claim of appellant.

THE 4TH MARCH 1845.

PRESENT :

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 194 OF 1842.

*Regular Appeal from the decision of Hurchunder Ghose, Principal
Sudder Ameen of the 24-Pergunnahs.*

NEEMCHAND RAI, APPELLANT,

versus

REGISTRAR OF THE SUPREME COURT, AS ADMINISTRATOR
TO THE ESTATE OF PERTABCHUNDER HULDAR,
DECEASED, RESPONDENT.

THE appellant alleges, that being afraid of dacoits, from the exposed situation of his house, and having confidence in Hurnarain Mundul, his mother's first cousin, he deposited with that person, on the 5th Magh 1246 B. S., rupees 5000, and golden ornaments, weighing, in rupees 326 4 annas. He got a receipt for the money and ornaments; and it contained this condition, that he might, at any time, get back the property deposited, in whole, or in part; in the former case, returning the receipt, in the latter, a memorandum of what had been got back being noted on the receipt itself.

That on the 15th of Phagoon, of the year in which the deposit was made, the appellant got back rupees 1500, the payment being duly noted on the deed, by Hurnarain. In the month of Jeyth 1247, the appellant applied for the delivery to him, of the ornaments, and the remainder of the money; when the transaction was altogether denied. He was accordingly compelled to bring this suit, against Hurnarain, which he did on the 26th August 1840, laying his action at Company's rupees 7634.

Hurnarain answered, that the whole story about the deposit is false. If there had been a deposit, there would have been made over to the appellant, *not* a receipt, but an authenticated list, of the

articles deposited. If the appellant had had so much money, he would have invested it in Company's paper, or kept it in the bank. The appellant had brought this suit, solely with an intent to evade claims that existed against him. He is much in debt; and the idea of his having money in deposit, is ridiculous. The defendant had apprehended him, having taken out a decree against him. Who would believe, that after this he would deposit property with Hurnarain? Besides, a person who had so much to deposit, would have the means of taking care of his property himself.

On the 19th May 1842, the principal sudder ameen dismissed the suit, with costs, on the following grounds. The five witnesses produced to prove the receipt, don't reside in the place where it was executed, but at some distance, and in different places from one another, and were present, as if by accident, at the time of alleged execution. They are none of them connected with either party, so as to render their presence as witnesses, probable. The plaintiff did not produce the remaining witnesses, nor could say where they were. The plaintiff's witness, Ramsunder, denied that he had ever given evidence before; but it is proved that he did. The plaintiff asserts, that the alleged writer of the deed, Radhanath Bose, and one of the witnesses, Gopeemohun Bamoorjee, are now residents of Buwalee, and servants of the defendant; but these allegations are disproved. It is established in evidence, that the defendant had apprehended the plaintiff, in satisfaction of a decree against him; and it is extremely improbable, under such circumstances, that he should have deposited articles with the defendant. If, notwithstanding, though plaintiff had confided in the defendant, it would not have been necessary to take from him, the kind of receipt, which the plaintiff alleges he took. As to the plea of being afraid of dacoits, people in such cases, take care to conceal their property; not openly to give it in charge to another in the presence of a great many people. Lastly, as is stated, by the defendant, if the plaintiff had had so much money, he would have invested it, or otherwise taken care of it.

Being of opinion that the foregoing decree is perfectly just, I uphold it, and reject the appeal, with costs. It is necessary to remark, that the original defendant, and his immediate heirs, have died, whilst the case has been pending in the lower court and in this. Disputes have arisen as to who should be accounted the legal heir of Hurnarain. As this Court have decided summarily, under Act XX. of 1841, that the right of inheritance lies in Pertabchunder Huldar deceased, and have recognized the registrar of the Supreme Court, as the administrator to the estate of the said Pertabchunder, it is my duty to acknowledge this administrator as the respondent; but, in doing so, I would be understood, as not prejudicing the rights of others, duly prosecuted, according to law.

THE 4TH MARCH 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 12 OF 1844.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Beerbhoom.*

SUTTER GHOOON DHUR, RAJ KOMAREE DASSEE, WIDOW
OF DHUR KISHEN DHUR, AND PRAN KISHEN DHUR,
SON OF SUTTER GHOOON, (DEFENDANTS,) APPELLANTS,

versus

RAY MONEE DASSEE, (PLAINTIFF,) RESPONDENT.

THE plaintiff instituted this suit, on the 16th November 1839.
She states her grandfather, Gopeenath Dhur, had four sons, viz:

1. Bharut Chunder,
2. Nobaice,
3. Koosaice, and
4. Sutter Ghoon.

Gopeenath disinherited Nobaice for bad conduct. Koosaice died during his father's life time. Plaintiff's father Bharut Chunder and Sutter Ghoon defendant, 12 years of age, lived together and were joint sharers. Bharut died leaving plaintiff, her minor son, and Nobong Monee her mother, all of whom held jointly with Sutter Ghoon, and sundry property was acquired with their joint funds. At length in 1245 B. S., Sutter Ghoon drove plaintiff and her son out of the house, and dispossessed her of her share of the ancestral property to which she was entitled through her father, viz. one half, which forms the ground of this action.

The defendant Sutter Ghoon, in answer, alleges his brother Bharut, who died in Cheyte 1224, in the presence of numerous persons, during his last illness, instructed him to set apart some lands for his two daughters, to support his wife Nobong Monee, and to build a temple, and set up an idol; the residue of the estate was to be enjoyed by him, defendant, who was left sole manager. Defendant consented to act; and, shortly afterwards, his brother died. He puts in a deed signed by Nobong Monee relinquishing her right, and pleads the statute of limitation as a bar to the action.

The principal sudder ameen of Beerbhoom, on the 25th May 1843, decreed a half share of the property acquired before Bharut

Chunder's death, and one-third of that acquired after his decease, with joint funds, in favor of the plaintiff.

The plaint, giving a detail of 37 items of property, real and personal, is laid at 14,987 Company's rupees, and a decree was passed by the lower court for 8,321 rupees 2 annas only.

The decree awards portions of land and houses, without distinctly and clearly indicating what portions are decreed, and where they are situated.

Without a specification of this nature, the Court are unable to determine what property is involved in appeal, and are equally incapable of passing final orders on the judgment of the principal sudder ameen, which is both confused and indefinite.

Under the above circumstances the Court direct that the case be returned for re-trial by the principal sudder ameen, who must be directed to record specifically in his decree, should such be his award, whatever lands, houses, or other property, he may adjudge to the plaintiff. The question of costs will be disposed of on the conclusion of the referred trial.

THE 4TH MARCH 1845.

PRESENT:

C. TUCKER,

JUDGE.

PETITION No. 208.

IN the matter of the petition of Musst. Mohunnee Dasse, filed in this Court, on the 15th April 1844, praying for the admission of a special appeal from the decision of Mr. William Taylor, acting judge of Midnapore, under date the 17th January 1844, affirming that of the collector of Burdwan, under date 14th July 1842 in the case of Anund Chunder Singh, (deceased,) husband of the petitioner, plaintiff, *versus* Brijmohun Dutt, defendant.

It is hereby certified that the said application is granted on the following grounds.

The plaintiff's claim has been dismissed without enquiry into its merits, because a previous suit by the same plaintiff had been dismissed on default. This is illegal; vide constructions No. 870 of date the 21st February 1834, and No. 266 of date the 19th February 1817.

Ordered, that the case be returned to the judge, with instructions to review his judgment on this point, and cause the plaintiff's claim to be heard and tried on its merits, if not barred by the statute of limitations. Should such prove to be the case, it will be liable to be dismissed on that special ground; but not merely because a previous suit had been nonsuited.

THE 8TH MARCH 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 162 OF 1843.

*Regular Appeal from the decision of Moolvee Mohumud Rookunuddeen
Khan, Principal Sudder Ameen of Purneah.*

MAHARAJAH ROODER SINGH, AND OTHERS, APPELLANTS,

versus

MUTOORANATH GHOSE, ALIAS SIREEKANTH RAI,

RESPONDENT.

THE respondent states, that he formerly sued Dyanath Rai, and Ramanath Rai, (who were in possession as heirs, under Regulation V. of 1799,) for the whole of the property left by his ancestor, Jeykunth Rai, according to a schedule of the same, given in by Radhakunth Ghose, the old servant of Jeykunth.

The respondent obtained a decree in his favor, and this decree was confirmed, in appeal, by this Court. In getting possession under the decree, he met with opposition from Maharajah Chutter Singh, the father of the appellants Maharajah Rooder Singh and Baboo Basdeo Singh, with respect to 1300 beegahs of an istumra-ree tenure, situated in Puttee Gumbera, and Puttee Jainuggera, and Puttees Gopeenuggur and Bugwanpoor, and included in mouzah Burrera Gopal.

After much litigation of a summary kind, this Court, in their proceeding, dated the 20th of July 1840, declared, that though the disputed property was proved to belong to the respondent, as the heir of Jeykunth, yet as those who opposed him, appeared to be in

possession, at the time he sued Dyanath and Ramanath, it was necessary that he should have included them as defendants. The respondent, accordingly, brought the present action, to recover possession, in the zillahi court of Purneah, on the 29th June 1841, laying the value, with mesne profits, at Company's rupees 25,970-8.

Maharajah Rooder Singh, answered, in substance, as follows: that when the plaintiff sued originally as heir to Jeykunth, he included in his action, rent-paying, and rent-free lands; now he sues separately for these, which is illegal, as splitting the ground of action: that he founds his claim on a schedule, given in by a servant, on the correctness of whose information no reliance is to be placed: that he had not filed any documentary proof, establishing his right to the lands claimed by him: that the papers filed by his ancestors, and the information procurable in the collector's office, shewed, that the istumraree tenure was for much less land than that claimed, in excess of what the plaintiff was already possessed of: and that in fact the land now claimed, was a part of the defendant's zemeendaree, and had been long in the possession of his family.

The answers of the other defendants were to the same effect.

On the 26th April 1843, the principal sudder ameen decreed for the plaintiff, with mesne profits, according to the account given in by the plaintiff, and with costs, exempting, however, from liability, Baboo Basdeo Singh; he never having been in possession of the disputed lands. The grounds of this decree were principally these. Neither party had given in papers, shewing the quantity of land there was in the mouzals, in which the disputed lands are said to be situated, nor could information on this subject, of a trustworthy kind, be procured from the collector's office. It was proved by witnesses, brought before the ameen by the plaintiff, that his ancestor had acquired an istumraree tenure of two or three mouzals, and that he had, as is usual, brought uncultivated land within the tenure, into cultivation, and given new names to this land. Though the witnesses on the part of the defendant, asserted, that the land in dispute was in his possession, and belonged to his estate, yet as living on his property, they were under his influence; and he is a powerful man. It is remarkable, that many witnesses on the part of the defendant, when the investigation in the case of the execution of the decree took place, admitted, that the disputed lands had been in the possession of Jeykunth, until Maharajah Chutter Singh took possession of them. It appeared also, from a great many judicial documents, establishing the residence of ryots, that the disputed lands are in the istumraree tenure acquired by the plaintiff's ancestor. The principal sudder ameen considered that possession for a long time, must govern the decision in this case, and this plea was with the plaintiff. There was nothing illegal, in suing separately for possession of rent-paying and rent-free land.

I see no reason to interfere with this decision. Even if it were true, that the istumrardar had got possession of more land than was included in his grant; that would be no reason why he, or his heir, should be summarily dispossessed. The probabilities in this case are in favor of the truth of the respondent's statement. I accordingly confirm the decree, dismissing the appeal, with costs.

THE 11TH MARCH 1845.

PRESENT:

C. TUCKER,
JUDGE.

PETITION No. 221.

IN the matter of the petition of Sham Ram Shah, filed in this Court, on the 18th April 1844, praying for the admission of a special appeal from the decision of the principal sudder ameen of a zillah Mymensingh, under date the 18th January 1844, reversing that of the moonsiff of Bazitpore of that district, under date 26th July 1843, in the case of Sham Ram Shah, plaintiff, *versus* Bholanath Shah, and others, defendants.

It is hereby certified, that the said application is granted on the following grounds.

The plaintiff instituted his suit for the recovery of a sum of money due on account, against Bholanath Shah, Rungeet Shah, Basseeram Shah, and the mother of Bydenath Shah, deceased, and obtained a decree from the moonsiff against Bholanath Shah and the property of Bydenath Shah. Bholanath Shah preferred an appeal and was exonerated by the principal sudder ameen; who however reversed the decision of the moonsiff in toto, thus depriving the respondent of that part of the moonsiff's decree, which authorized execution against the property of Bydenath Shah deceased, whose heirs did not appeal from the moonsiff's decision. No reason is assigned for this. The case is therefore incomplete.

Ordered, that it be returned to the principal sudder ameen with directions to review the case; and, with reference to that part of the moonsiff's decision, which bears upon the property of Bydenath Shah, to pass such orders as may appear to him just and fitting.

THE 12TH MARCH 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 114 OF 1843.

*Special Appeal from the decision of Mr. G. C. Cheap,
Officiating Judge of Hooghly.*

LUKHEENURAIN CHUCKERBUTTEE, AND MOOSUMAT
JANONEE DIBBYA, WIFE OF PERTABNURAIN CHUCK-
ERBUTTEE, DECEASED, APPELLANTS,

versus

BUSAWUN TIWAREE, THE HEIR OF RAMMOHUN
TIWAREE, DECEASED, RESPONDENT.

THE appellants state, that on the 18th Cheyt 1235, Rammohun Tiwaree, the uncle of the respondent and dur-putneedar of lot Buwanceepoor, in pergunnah Chunderkonah, sold to Lukheenurain, and his brothers, Ramnurain and Pertabnurain, the sel-putnee called lot Banka and Sooltaneepoor. That they paid the rent regularly to Rammohun Tiwaree, during his life, and after his death, to the respondent (after he had proved in court his right of succession) up to the end of 1240 B. S. The respondent, colluding with the putneedar, withheld his rent; and being sued summarily for the balance of 1240, the putneedar obtained a decree, and at a sale in satisfaction of that decree, bought the dur-putnee tenure in his own name. Afterwards, the respondent purchased it back, the nominal buyer being his servant. As the appellants were not in balance, and had lost their property through the fault of the respondent, they instituted the present suit, on the 14th February 1837, to recover the price of the tenure, viz. rupees 1850, with interest from the date of suit.

The respondent answered, that the appellants did not pay their rent, and that in consequence of their not doing so, he had lost his

tenure. That he had a large demand against them. He denied also, that he had re-purchased the dur-putnee tenure which had been sold.

The principal sudder ameen, Seyud Ahmud Khan, on the 26th January 1839, dismissed the suit with costs, because, for the reasons given by him, he did not think, that the plaintiffs had proved that they were not defaulters.

The judge, Mr. G. C. Cheap, on the 27th August 1842, confirmed the foregoing decree, agreeing with the principal sudder ameen, with respect to the facts; and being of opinion, also, that the action did not lie at all, it not having been instituted within two months from the date on which the dur-putnee tenure was sold, as required by clause 5, section 17, Regulation VIII. of 1819.

A special appeal was admitted in this case, by Messrs. Tucker and Reid, on the 19th April 1843, to try the point, whether the appellant could sue, after the expiration of two months from the date of sale, with reference to clause 5, section 17, Regulation VIII. of 1819?

The Court are of opinion, that this suit is not barred by the clause and section of the law quoted by the judge. The sort of action referred to, by the above clause and section, is one to recover the price paid by an under-tenant, for the interests he held in the tenure sold, out of the proceeds of sale. An action instituted for this purpose, must be laid within two months from the date of sale, and the object contemplated, is to prevent any unnecessary delay in the disposal of the surplus proceeds of the sale. There is nothing laid down in the clause and section alluded to, barring the institution of a suit by an under-tenant, for the recovery of damages which he may have sustained, by reason of the bad faith of the superior, under whom he held. This being the opinion of the Court, and the special appeal having been admitted in this case, before Act III. of 1843 came into force, they proceed, according to former usage, to inquire whether the appellant's allegations be true; and, if so, whether they entitle them to the damages sought by them? The Court are of opinion, that the appellants have satisfactorily proved, that they were not in balance to the respondent, when his dur-putnee was sold. They see no reason whatever to doubt the genuineness of the receipts filed by the appellants, some of which tally with the sums acknowledged to have been received by the respondent, and all of which appear to have been written in the same hand-writing with those, the genuineness of which there is no reason to doubt. The Court think that the payment of the money covered by the above receipts, is further proved by unexceptionable evidence. Taking these facts into consideration, with the extremely suspicious circumstance, that the dur-putnee tenure seems to have been bought back by a man of straw, and a servant of the respondent, they consider that a sufficiently strong case of bad faith has

been established against the respondent to entitle the appellants to have what they claim awarded to them. The Court, accordingly, decree for the appellants, with costs, reversing the decision of the judge.

THE 12TH MARCH 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 130 OF 1844.

Special Appeal from a decree passed by the Principal Sudder Ameen of Behar, May 9th 1843, reversing a decree passed by the Moonsiff of Gyah, January 5th, 1843.

. GHUREEB CHUND, APPELLANT, (PLAINTIFF,)

versus

AKUL ZURGUR, RESPONDENT, (DEFENDANT.)

THIS suit was instituted by appellant, on the 20th July 1842, to recover from respondent the sum of thirty rupees, one anna, and one pie (Rs. 30-1-1) amount embezzled, in grain and otherwise, from the shop of the parties, joint traders at the time.

The moonsiff, on evidence sufficient in his opinion to substantiate the responsibility of respondent for the alleged deficiency, to the amount stated, decreed the same to appellant, with costs.

On appeal, the principal sudder ameen held, that, because respondent (defendant) in a separate transaction, had obtained a decree, on a bond, against appellant (plaintiff,) the present claim could not be maintained; and reversed the moonsiff's decree accordingly.

As the judgment of the principal sudder ameen cannot be upheld on the ground assigned for it, I direct that the case be returned, to be legally disposed of on its merits, under section 2, Act III. of 1843, and clause 2, section 2, Regulation IX. 1831.

THE 12TH MARCH 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 143 OF 1844.

Special Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, July 14th 1843, reversing a decision of the Sudder Ameen of Arrah, passed December 26th 1842.

BABOO RAM LOCHUN SINGH, APPELLANT, (DEFENDANT,)

versus

HYDER ALI KHAN, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, on the 25th September 1841, to recover from appellant possession of mouzah Burkub, in pergunnah Sehseeram, a settlement for which, in perpetuity, had been made with appellant, on resumption of the estate, theretofore held rent-free, by Government; respondent urging a prior right on the score of old proprietorship.

The claim was dismissed by the sudder ameen, as not established; and, in appeal, the case came before Munowur Ali, the principal sudder ameen. He reversed the decision of the lower court, because, amongst other grounds, the settlement in question was opposed to certain Circular Orders of the Board of Revenue and Government. On being called upon by the Sudder Court to submit these orders, he stated that they had not been filed by either party to the suit; but that he acted upon a knowledge of their issue and their bearing upon the question before him, which he had disposed of accordingly.

Such a proceeding being irregular and illegal, the case will be returned, to be duly disposed of, independently, or in connexion with the Circular Orders thus cited. If the latter, they (the orders alluded to) must be before the court, and filed with the record.

THE 12TH MARCH 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 255 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Amcen of
Moorshedabad.*

RAM CHUNDER SHEAL, APPELLANT, (DEFENDANT,)

versus

MUTTORNATH BRIGBASHEE, RESPONDENT, (PLAINTIFF.)

THIS is a suit for possession on certain brick-built premises, standing within a specified boundary, which the plaintiff, respondent, states were acquired by his father, and originally built of mud and thatched, but, subsequently, rebuilt by him of brick and mortar; and of which he was dispossessed by order of the fouzdarce court.

The appellant, defendant, in answer, asserted, that the plaintiff, respondent, and his father were his commission agents; had acquired the premises for him in their own name, and had built them with his money; in proof of which he referred to notes from the plaintiff, and an account of the expense of rebuilding in brick and mortar, rendered to him by plaintiff, and entered in his, appellant's, books.

It appears, that the main fact, the payment of the expense incurred in the rebuilding of the premises, and which could have been easily ascertained, has been very imperfectly investigated. Therefore ordered, that the case be returned to the zillah, for the judge to retry it himself: after calling upon the defendant, appellant, to file, in original, the account of the expenses incurred in the rebuilding and rendered by plaintiff, respondent, to him; and for his books in which the expenses were entered; and for witnesses to prove them. Should the books be bulky, and the witnesses residents of the place where appellant, defendant, lives and carries on business, the judge will use his discretion in issuing the proper directions for the examination of the books, and the witnesses, by the nearest court to the appellant, defendant's, house of business.

THE 12TH MARCH 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 250.

IN the matter of the petition of Kishen Kummul Sing, filed in this Court on the 11th May 1844, praying for the admission of a special appeal from the decision of the judge of zillah Rajshahee, under date the 29th February 1844, reversing that of the moonsiff of Shazudpore, under date the 20th July 1842, in the case of Sombhonaath Mangee, plaintiff, *versus* Kishen Kummul Sing, and others, defendants.

It is herely certified that the said application is granted on the following grounds.

The petitioner, on the 9th January 1844, applied to the judge to be allowed to file (a khata bahee) an account book called for by the court, from Kishen Jye Sing, alleging that he, petitioner, had dismissed the said Kishen Jye Sing, who was his gomasteh; and that the required papers were in his, petitioner's, hands. An order was passed on the petition permitting him, petitioner, to file the papers when the case should come on for hearing. On the 10th January the judge however issued fresh requisition on Kishen Jye Sing for the accounts.

The case came on, on the 29th February 1844, before the judge, who demanded of the petitioner's vakeel the papers in question, and it was pleaded they should be filed the next day. Without, however, further delay, the case was decided against the petitioner on the above date.

The special appeal is admitted on the ground that such disposal of the case, no notice having been given to the petitioner that the case was to come on, on the day it was decided, is not in consistence with the practice of the courts.

ORDERED:

That the case be admitted on the file of this Court, and the judge be directed to restore it to its former number on his file: having received the exhibits called for, and proffered by the petitioners on the 9th January 1844, he will dispose of the case on its merits.

THE 13TH MARCH 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 83 OF 1844.

Special Appeal from the Principal Assistant at Goalparah.

RANA KAMSIHANA, (PLAINTIFF,) APPELLANT,

versus

GOUR SING AND SOORJ SING BURKUNDAUZE,

(DEFENDANTS,) RESPONDENTS.

IN this case the plaintiff sued for damages, in consequence of the defendants having charged his wife with theft before the police, and causing his house to be searched. The sudder ameen of Goalparah gave a decree in plaintiff's favor for 64 rupees as damages. On appeal the principal assistant, under the commissioner of Assam, stationed at Goalparah, reversed this order, because the plaintiff's wife was a woman who appeared in public in the bazar at the market places, &c., stating that the plaintiff should have complained in the foudjdarce court.

A special appeal was admitted by Mr. J. F. M. Reid, on the 10th February 1844, on the following grounds:—"As this decision lays it down as a rule that slander against a female, who is not of that rank in life which renders her seclusion necessary, though undoubtedly of good character, cannot be visited by damages in a civil court, and that a party falsely accused in a criminal court can only sue in that court for the punishment of the false accusers, and not for civil damages; I admit a special appeal to try these points."

The Court are of opinion that the principle laid down by the principal assistant in appeal is equally opposed to law and justice. Annuling the decision of the principal assistant, they direct that the case be returned to him for disposal on its merits.

THE 15TH MARCH 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 104 OF 1844.

Regular Appeal from a decision passed by the Principal Sudder

Ameen of Shahabad ; December 20th, 1843.

CHOUHDIREE HURBUN SINGH, APPELLANT, (PLAINTIFF,)

versus

GOVERNMENT, HURNATH SUHAAE, GUNEISH PURSHAD, RAM NURAIN SINGH, JYE SINGH AND SHEODIAL SINGH, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant, on the 7th November 1842, to obtain a reversal of the sale of talooq Bulbhadrpore and Durehut, pergunnah Sehseeram, sold for balance of revenue by the collector of the district, on the 17th April 1841.

The plaint set forth, that the amount of arrears due was tendered at the time of sale, but not accepted by the collector; and that the estate was purchased by the respondents Hurnath Suhaee and Guneish Purshad, not for themselves, but on account of Ram Nurain Singh, Jye Singh and Sheodial Singh, whose arrears, forming the balance claimed, had caused the sale of the property. Neither of these assertions was proved. The money was offered at the time of sale, and a packet or bundle exhibited as containing it (Rs. 510); but when the collector had this opened, it was found to contain meal (*suttoo*) without a single rupee amongst it. The appellant imputes this to the roguery of the three last named respondents; but the imputation is not supported, and the fictitious purchase is not proved.

Under these circumstances, the suit was dismissed by the principal sudder ameen, with costs payable by appellant; and with reference to the same, and nothing new having been advanced to impugn the decision, it is hereby affirmed.

THE 17TH MARCH 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 207 OF 1843.

*Regular Appeal from a decree passed by the Principal Sudder
Ameen of Behar, June 22d, 1843.*

RAEE NUND LAL, APPELLANT, (DEFENDANT,)

versus

SHAH KURAMUT HOSEIN, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted, on the 11th July 1842, by respondent, to recover from appellant the sum of nine thousand nine hundred and eighty-six Company's rupees, ten annas, and eight pie, (Co.'s Rs. 9,986-10-8), the amount of mesne profits on the boundary lands of mouzah Raeeszuhoorpore, in virtue of a decree for the said lands, bearing date the 10th December 1840; the mesne profits claimed, being from Aughun of the Fuslec year 1239, to the Khurcef harvest of 1245, at the rate of 3 rupees 8 annas per beegha.

A decree had previously been passed for the lands on the 21st February 1838, in a suit instituted by respondent, in which the claim for mesne profits was not included; but in consequence of an illegal valuation of the lands, as affecting the stamp on which the plaint was drawn up, the judgment was cancelled by the Sudder Court, and a new disposal of the case directed, after a due correction of the error. On retrial, the original judgment was maintained; and, on appeal, affirmed by the Sudder Court.

The order just mentioned, for a new disposal of the case, was passed by the Sudder Court on the 8th July 1840; but, meanwhile, the Circular of the 11th January 1839, had issued, and was in full operation. With reference to this, appellant pleaded, that the claim for mesne profits should have been included in the amended plaint, and, not having been so, was not now tenable; and the point for

consideration now before the Court, is, how far the circular order in question is applicable to the case.

The principal sudder ameen was of opinion, that it (the circular order) did not bar the institution of this suit; inasmuch, as the original suit, for the land only, was instituted prior to the promulgation of it; and the order of the Sudder Court of the 8th July 1840, did not provide for the institution of a new suit, but for a new disposal of the original one, in an amended and legal form. He accordingly decreed for the plaintiff in the sum of Company's rupees three thousand three hundred and twenty-eight, thirteen annas, ten gundas, and eight krant (Co.'s Rs. 3,328-13-10-8), being at the rate incidentally stated as the produce of the lands, in the first plaint filed by the respondents. Costs to be paid, by appellant, upon the amount thus adjudged.

The Court, concurring in opinion with the principal sudder ameen, that the Circular Order of the 11th January 1839 cannot be considered to bar the claim preferred, and that, to the extent of the amount decreed, the said claim is just and equitable, affirm the decree passed on the 22d June 1843, with costs payable by appellant.

THE 17TH MARCH 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 236 OF 1843.

Special Appeal from the decision of Mr. E. Bentall, Judge of Jessore.

BABOO GOORDASS RAI, APPELLANT,

versus

RANEE KUTTEEANEE, RESPONDENT.

KISHENCHUNDER SINGH, the father of Baboo Sireenurain Singh, deceased, the son of the respondent, obtained a decree of the Sudder Dewanny against the ancestor of the appellant, by which four kismuts, viz. Gobra, Dhobakola, Buhmundunga, and Satghurreah, were adjudged to belong to Kishenchunder's zemeen-daree, pergunnah Nuldee. This decree is dated the 22d June 1814, and it contained the following order, that both parties should

assess the lands of the above kismuts according to law, and the rates of the pergunnah. Disputes arising, Mr. J. H. Harrington, (who was one of the judges who passed the former decree,) on the 6th July 1818, issued the following order: "The respondent, (Kishenchunder) is competent to measure the land, at his own expense, according to Clause 8, Section 15, Regulation VII. of 1799, and to demand from the talookdar in possession, a fair rent admitted by the ryots, deducting malikana according to pergunnah rates, and the provisions of Section 8, Regulation V. of 1812. And in the event of its being necessary, the respondent might institute a new suit."

A long protracted litigation ensued, which it is needless to enter into. Suffice it to say, that Baboo Sircenurain Singh instituted the present suit in the zillah court of Jessore, claiming rupees 617 7 annas, as a fair rent for 22 khadas 8 pakees 14 kanees 5 gundas of land, admitted by the opposite party to be in the above four kismuts. The suit was instituted, agreeably to a decree of this Court, dated 6th February 1834, and which decree referred to, and was founded on the decree of the 22d June 1814, and the proceeding dated the 6th July 1818.

The appellant answered in substance, that the rent demanded was in excess of what was admitted by the ryots to be a fair rent; and that it was in excess of what had been realized for many years by the manager of the plaintiff, when the zemeendaree was under the jurisdiction of the court of wards.

On the 17th December 1839, the principal sudder ameen, Rai Hurreenurain Ghose, decreed for the plaintiff, (with costs,) an annual jumma of rupees 589 1 anna 11 gundas 1 cowrie, the pergunnah rates being taken as the basis of the assessment, the defendant having failed to file papers shewing the actual collections from the land.

On the 15th July 1840, Mr. A. Lang, the judge, confirmed the foregoing decree.

On the 13th January 1841, Mr. D. C. Smyth sent back the case, because an ameen had not been deputed, to ascertain, what the ryots admitted to be a fair rent; that is, how much had been realized from them by the defendant.

On the 31st December 1842, the principal sudder ameen, Ramcoomar Chowdry, decreed as before for plaintiff, on the following grounds. He had no reliance on the papers of collection for the years 1246, 1247, and 1248, which had been given in by the defendant. If the latter had intended to give genuine papers, he would have done so long ago. The papers, too, were entirely at variance with the evidence of ryots, taken before the ameen. Though a few ryots under the influence of the defendant, supported the genuineness of the papers, the defendant failed (when called on to do so) to bring forward the other ryots, to corroborate the

evidence of the few. These papers shewed, collections annually of rupees 360 8 annas 10 gundas from the disputed lands, though for the same lands, the defendant had formerly offered to pay rupees 825 5 annas 10 gundas. In like manner, the principal sudder ameen was not satisfied with the report of the ameen, which gave collections at the rate of rupees 973 6 annas 3 gundas, founded on the papers of discharged putwarries. He preferred to fix the assessment according to the pergunnah rates, as determined by various decrees of court.

The judge, Mr. E. Bentall, on the 18th April 1843, confirmed the award of the principal sudder ameen, with respect to the amount of rent to be demanded, unless the defendant could prove, that prior to the order of the Sudder Dewanny, dated the 22d June 1814, he had realized a smaller rent. In this case, if he sued within six months from the date of the judge's decree, (and including the ryots in the suit,) a deduction would be made according to the lesser rent.

On the 13th September 1843, a special appeal was admitted by Messrs. Tucker and Reid to determine, "whether, with reference to the decrees of this Court, dated the 22d June 1814, and 6th February 1834, and the miscellaneous order of J. H. Harington, Esq. dated 6th July 1818, the judge was competent to fix the jumma of the defendant's lands, at the pergunnah rates, or not."

Interpreting the decrees of this Court, and the miscellaneous proceeding referred to, in a large sense, I cannot discover, that they have been contravened by the courts below. With respect to the decree of 1814, there cannot be any doubt whatever. In that decree, authority is given to Kishenehunder, in express terms, to assess, according to the pergunnah rates. To that decree, express reference is made by the decree of 1834, as well as to the miscellaneous order of 1818. Under these circumstances, I would give great weight to the meaning of the original decree, even if contradicted by a subsequent miscellaneous order, which in my opinion it is not. The only words in this latter order, concerning the meaning of which a doubt can arise, are the words *jumma wajibi mahbooli rayia*. In sending back the case, Mr. D. C. Smyth translated these words, as meaning, the rents fairly collected from the ryots. It is plain to me, that the words do not mean this. The word in universal use, when speaking of rent collected, is *wusool*; and in contradistinction of this term, the word employed to express a consent to pay, an agreement to pay, is *kubool*. Hence the *kubool*eeut, which means an acknowledgment, from a holder of land, (whether a farmer or a ryot,) that he has a certain rent to pay. If Mr. Harington had intended to refer to the actual collections, he would have used the word *wusool*, and he would have omitted the word *wajibi*, which signifies, fair, just, proper; a term altogether unnecessary or without meaning, with reference to rent actually collected. What then do the words mean? They cannot

mean, that the rent is to be fixed, according to what the ryots are willing to give, without any reference to the reasonableness of the amount of rent, for in that case, the word *wajibi* would not have been used, and it is not conceivable, that Mr. Harington should thus issue an order so diametrically opposed in meaning to his own previous award. I am of opinion, that the true meaning of these words is given in the following passage of a decree of this Court, passed by Mr. Abercrombie Dick, the case originating in those very decrees, which led to the institution of the present suit. "It is manifest, that in both, (the decree, namely, of 1814, and the order of 1818), the order was to demand a fair rent; in one, according to the pergunnah rates; in the other, according to the agreement of the ryots; and the meaning of this latter phrase is this: if the ryots say, one rupee for a certain quantity of land, is a fair rent, and the zemeendar demand two rupees rent, as the fair one, then this difference can be settled, only by fixing the rent at the rates prevalent in the pergunnah." In my judgment, no other rational meaning can be attached to the words. They could not be intended to convey to the ryots the right of fixing the rents at their discretion. Neither could they be meant as fixing the assessment solely upon the past collections; for in addition to the objections I have urged to this meaning, it may be asked, whether *no assessment at all* was to be imposed, provided the amount that had been collected heretofore, could not be truly ascertained. In point of fact, this latter contingency has actually happened, there being no trustworthy information before the Court, with respect to past collections, although every practicable means of ascertaining the truth on this point, has been employed.

Accordingly, I see no reason for interfering with the judge's decision, and confirm it accordingly, with the costs incurred in all the courts. I may observe, that I dissent from that part of the judge's order, which, under certain conditions, gives leave to the original defendant to sue again. It is not necessary, however, to have this part of the decree modified by a full bench, inasmuch as the defendant has failed to comply with the conditions, and the order itself, therefore, is at an end.

THE 18TH MARCH 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 266 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen,
Mr. James Reily, of Dacca.*

OMAKANT BANOORJEEAH, APPELLANT,

versus

KASHEEKANT BANOORJEEAH, RESPONDENT.

THE respondent sued for possession on certain specified lands with usufruct, laying his suit at 8,500 Company's rupees. He grounded his claim on a deed of butwara, or partition given to him, to the appellant his brother, and to another brother, by their father in 1231. The appellant denied the claim, and founded his denial on that very deed of butwara or partition. Both parties filed extracts from that deed, and the extracts of each corroborated his statement.

The principal sudder ameen, instead of calling upon the parties to file the original, or authenticated copies of the whole deed, which would at once have settled the point at issue, assumed the correctness of the extract filed by plaintiff, respondent; and entering on other and collateral evidence, and directing a local inquiry about possession, decided in favor of plaintiff, respondent.

The Court consider the investigation most unsatisfactory and incomplete. They therefore return the case to the city judge, with directions to place it on his own file, and re-try it himself, calling upon the parties to file in original, or authenticated copies thereof, the deed of butwara or partition on which both parties have founded their respective rights, and, after a careful examination of its contents, and calling for any other evidence in elucidation, or corroboration of the same, and directing any further local inquiry, he may deem requisite, decide.

THE 18TH MARCH 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 195 OF 1843.

*Regular Appeal from a decree passed by Syud Abdool Wahid Khan,
Principal Sudder Ameen of Patna, May 31st, 1843.*

SYUD ABDOOLLAH, APPELLANT, (PLAINTIFF,)

versus

1	HURKISHUN DAS,.....	} RESPONDENTS, (DEFENDANTS.)
2	JUMNA DAS,	
3	BULLUBH DAS,	
4	JUGMOHUN DAS,	
5	BIRJ RUTTUN DAS,	
6	BIRJ BHAWUN DAS,	
7	MUSST. KHYRO NISSA,	
8	NUND PURSHAD,	
9	JADOO LAL,.....	
10	GIREE DHUR,	

THIS suit was instituted, on the 15th February 1841, by appellant, to recover the sum of seventy-seven thousand four hundred and fifty-four Company's rupees, eight annas, and three pie (Co.'s Rs. 77,454-8-3) principal and interest, due on a mortgage bond (or burnanameh) dated Assar 1st 1233 F., and a deed of agreement (or ikrarnamch) dated Kartik 1st 1234 F.

The above respondents 1, 2, 3, 5, and Birj Lal, father of 6, borrowed from appellant, in 1232 F. 40,000 Sicca rupees; pledging, as security, the talooqs of Rampore Damoodur, and Noabar. They subsequently borrowed from him the further sum of Sicca rupees

1,26,400, making a total debt of 1,66,400; for which, on the 1st Assar 1233, they executed a deed, in favor of appellant, pledging, besides the above talooqs, a 6 annas' share of mouzah Sullao, held by them in mortgage from Gujput Race, and agreeing to discharge the debt in, or before, the month of Jeyth 1234, with interest at the rate of 11 annas per cent. per mensem. If not thus discharged, the amount due was to bear interest at 12 per cent. per annum, from the 1st Assar 1234 F. till the entire debt should be liquidated.

After the above arrangement was made, the appellant discovered that the property pledged, as above, by the respondents, was insufficient to protect him from possible loss; and required from them additional security. Complying with this requisition, they gave him, on the 1st Kartik 1234, an ikrarnamoh, which, in addition to the lands mentioned in the burnanamoh of 1233 F., pledged the villages of Kunkur-aneg, Lumerecalar (or Maharajpore) and Konee, all in pergunnah Kotumbah, with certain houses and premises, as set forth in the deed.

The remaining respondents were made parties to the suit, in consequence of attempts by them to bring to sale portions of the property pledged to appellant as above, in satisfaction of decrees held by them against the other respondents, the mortgagers to appellant of the property. These last (the mortgagers) acknowledge the justice of appellant's claim; and of the other respondents (the decree-holders) the only one present in Court, as a party to the case, is Nund Purshad, who asserts his right to sell, in virtue of a decree in his favor passed by the Patna provincial court on the 22d August 1833.

On the 31st May 1843, the principal sudder ameen recorded his opinion and judgment as follows:—"No doubt exists as to the deed dated the 1st of Assar 1233 F.; but with regard to that of the 1st of Kartik 1234, I entertain strong suspicions:—1st, Had it been the intention of the plaintiff (appellant) to secure a lien on the property included in it, he would have done so in the first deed. 2dly, When the property included in both the deeds was advertised in zillah Behar, to be sold in satisfaction of the decree of Futteh Buhadur, the plaintiff opposed the sale, alleging the property to have been pledged to him under the said two deeds; but, though allowed ample time, he did not produce either of them, and, at last, on the 14th December 1839, it was ordered for sale. On the 7th February 1840, he produced both. Although the first mentioned deed is in the same predicament as to non-delivery when called for, yet, perhaps he kept it back awaiting (the fabrication or preparation of) the other; for there does not appear any reason why they should have been executed one after the other. Again, the second deed is written on two pieces of stamp paper, the purchase of the first of which is stated to have been on the 23d May 1825, and that of the

second on the 19th October 1824, for the execution of a mokhtar-nameh. Under these circumstances, the deed dated the 1st Kartik 1234 F. appearing invalid, the plaintiff cannot hold any lien on the property mentioned in it, and he must confine himself to the sale of that included in the first deed dated the 1st Assar 1233 F., and the decree-holders may sue out execution of their decrees against what is in the second deed of the 1st Kartik 1234 F. But as Rampore Damoodur and Bhamundee, of the deed of Assar 1st 1233, have already been sold in execution of a decree obtained by Futteh Buhadur, but with reservation of the rights of the plaintiff, he (the plaintiff) must first proceed against the other villages mentioned in that deed; and should they not suffice to liquidate his demand, he may then proceed against these two. The purchaser of these two, may, in that case, sue Futteh Buhadur for the sum paid for them. Further, as it appears that sundry items in the deed dated Kartik 1st 1234 F. have already been sold, Nund Purshad and the heirs of Khyro Nissa, as well as any other decree-holders, may sue out execution against what remains to be sold. Decreed accordingly."

We are unanimous in rejecting the arguments of the principal sudder ameen, which we regard as futile and puerile. It is difficult to say indeed what his opinion is in regard to the deed of Kartik 1st 1234 F. Whether he considered it to be a forgery, and never executed by the defendants (respondents), or whether executed by them, but antedated to prevent the decree-holders from attaching and bringing to sale the property mentioned in it; there is nothing to shew. He merely states it to be 'invalid;' but assigns no reason why he deems it so. His judgment however restricts the appellant to the sale of the property of the first deed of 1233 F., and authorizes the sale of that of 1234 F. for the benefit of decree-holders in this and other cases. We do not see any ground for doubting the execution of the second deed: and as no attachment was ever taken out by the respondent Nund Purshad against the property in either deed, and he has not produced any document shewing it to have been pledged to him, and the same being applicable to Khyro Nissa, we modify the decision of the lower court, and, recognizing the validity of both the deeds in question, decree against the respondents Hurkishun Das, Jumna Das, Bullubh Das, Jugmohun Das, and Birj Ruttun Das, with right of execution to appellant against the whole of the property indicated in those deeds; with exception only to such portions as may have already been sold with the consent of appellant, as stated in his plaint. Costs to be paid by respondents Nund Purshad and Musst. Khyro Nissa.

THE 19TH MARCH 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 301 OF 1842.

*Regular Appeal from the decision of Mr. James Reily, Principal
Sudder Ameen of Dacca.*

NUNDKOOMAR RAI, APPELLANT,

versus

INDURMUNNEE CHOWDRAIN, &C., RESPONDENTS.

THE respondents state, that the four brothers, Jeebunkishen Rai, Hurreekishen Rai, Rajkishen Rai, and Gopalkishen Rai, carried on business as partners, in banking, in commerce, and as landholders. That Hurreekishen and Rajkishen having died, an adjustment of accounts, up to the 24th of Assin 1232, of the mahajiny year, took place; the said adjustment having been signed by Jeebunkishen and Gopalkishen, by Gopeemohun, the husband of the respondent, Indurmunnee, and son of the deceased, Rajkishen, and by the appellant, the son of the deceased Hurreekishen. That after this adjustment took place, the business was carried on as before, up to the 11th Assin 1236, when another adjustment took place, which shewed a balance against Jeebunkishen of rupees 69,555-14-16-1; and against the sons of Hurreekishen, viz., Nundkoomar and Kishen-koomar, of rupees 4,939-5-9-1, in favor of the respondents, the heirs of the other partners. That the appellant and his brother refusing to sign this last adjustment, arbitrators, with the consent of all, were subsequently appointed. These admitted the account of 1236 to be correct, but failed to give an award. Upon this, certain of the respondents sued Jeebunkishen for rupees 52,166-15-2-1 in the zillah court of Dacca, and, on the 14th July 1840, obtained a decree in their favor, from the principal sudder ameen. By the investigation that took place in that case, the correctness of the

aforesaid balance was satisfactorily established. The present suit was accordingly instituted, on the 11th May 1841, against the heirs of Hurreekishen for Company's rupees 5,259-0-3.

On the part of the appellant, both adjustments are denied. With respect to the latter adjustment, indeed, the respondents themselves admit, that the appellant and his brother refused to sign the accounts, and that arbitrators were appointed on both sides to strike a balance. Those arbitrators did not give any award. Therefore there is no judicial ascertainment of balances. How therefore, can the plaintiff's statement of accounts, unsigned, be considered as a lawful claim in a court of justice? If a true adjustment should take place, it would be found, that a large balance is due to the defendants in this case. If it were true, as alleged by the plaintiffs, that the arbitrators, after examining the account of 1236, had pronounced it to be correct, they would have decided accordingly. It is farther stated, that the arbitrators have acted in collusion with the plaintiffs.

On the 6th September 1842, the principal sudder ameen decreed for the plaintiffs, with costs, considering that both adjustments of accounts had been proved, the latter by the two arbitrators; and that the same fact had been established in the case, in which the present plaintiffs had obtained a decree against Jeebunkishen.

In the opinion of the Court, this suit is barred by the rule of limitation. The spirit of that law, requires, that partners in business must sue each other for alleged balances, within 12 years from the date of an adjustment of accounts, which both parties admit to have taken place. Upon any other principle, the courts might often find it necessary, in order to ascertain what the balance was, and in whose favor, at any particular time, to examine the accounts for an indefinite course of years, prior to the date of the alleged cause of action. Applying this principle to the case before them, the Court observe, that the alleged adjustment in 1236, cannot be admitted to have taken place. The accounts were not signed on the part of the appellant, and both parties submitted their dispute to arbitrators, for the express purpose of having a balance of accounts struck. As those arbitrators failed to give any award, a court of justice could not ascertain the state of the balance, without examining the accounts, from the date of the last previous adjustment, admitted by both parties. When such an adjustment took place, it is difficult to say; for the appellant does not admit the alleged adjustment of 1232; but, even admitting that an adjustment then took place, an examination from that time, would include a period of more than sixteen years. The Court accordingly, decree for the appellant, with costs, reversing the decision of the principal sudder ameen.

THE 19TH MARCH 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 27 OF 1843.

*Special Appeal from the decision of Mr. Cunliffe, Acting Judge
of Midnapore.*

GIREEDHUR BHOOE, APPELLANT,

versus

DYA RAM HOOEE, &C., RESPONDENTS.

THE appellant states, that he holds a parcel of rent-free land, amounting to 12 kottahs, in the village of Bardhunoo, and which land his ancestors had possessed from a date antecedent to the accession of the Company's rule. That he holds an authenticated order by the ruler of the province for the time being, dated the 24th March 1798, recognizing the rent-free character of the land, and prohibiting the proprietor of the village in which it is situated from treating it as rent-paying land. That the appellant does not possess any rent-paying land in the above village. Notwithstanding this, the respondents, on the pretence that the appellant was in possession of rent-paying land, and was in balance, attached his cattle, under Regulation V. of 1812, filing a forged kubooleent or acknowledgment by the appellant. The latter giving security, according to law, instituted the present suit, on the 7th January 1835, to have his property released from attachment.

The respondents denied, that the land, comprising 12 kottahs, was rent-free. If it were, the original order of the ruler referred to, would be forthcoming in the office whence it was issued. That the appellant was in possession of 6 beegahs 4 kottahs of rent-paying land, for which he granted a kubooleent in 1234 Umlee. That he continued to pay the rent; but, failing to do so in 1240 and 1241, his property had been attached.

The moonsiff of Midnapore, Meer Kumber Allee, on the 7th July 1836, decreed for the plaintiff, with costs; it having been proved by a local inquiry, that the plaintiff possessed no rent-paying land, and had long been in possession of a parcel of rent-free land.

The principal sudder ameen Mooluvie Abuddussunnud Khan confirmed the above decree.

On the 12th March 1839, the acting judge Mr. Erskine, sent back the case, that the principal sudder ameen might decide it, after having referred it to the collector, under Section 30, Regulation II. of 1819.

On the 24th May 1841, Rammohun Rai, the principal sudder ameen, upheld the decrees of the moonsiff and of the principal sudder ameen who had decided the case in the first instance.

Mr. Cunliffe, the acting judge, on the 29th September 1842, decided in favor of the appellant (defendant) because the legality of the rent-free tenure had not been proved, and because it had been proved, that the respondent (plaintiff) was in possession of rent-paying land.

The case was admitted to a special appeal by Messrs. Tucker and Reid, on the 4th January 1843, because an inquiry into the question of the legality of the rent-free tenure was not necessary. All that was necessary, was, to ascertain, whether the appellant (plaintiff) was in possession of land as rent-free. If he was, he was entitled to a decree; it being optional with the respondent to sue him, if he considered that the land was not legally rent-free.

The Court entirely agree with Messrs. Tucker and Reid, that the sole question for consideration, in this case, is, whether the appellant (the original plaintiff,) held the disputed land of 12 kottahs as rent-free land or any other rent-paying land, in addition?

The order of Mr. Erskine to have the case tried under Section 30, of Regulation II. of 1819, was illegal; the plaintiff having brought his suit in a perfectly regular way, to have his property released from attachment. Equally irrelevant was that part of Mr. Cunliffe's judgment, which dismissed the plaintiff's claim, on the supposed invalidity of the rent-free tenure. With respect to the fact, whether the plaintiff held the land under dispute, as rent-free, the Court observe, that in support of this fact, he produced a document signed by the chief of the province, from which it is clear, that the plaintiff's ancestor was in possession at that time (1798) of a parcel of land, which was claimed then, as rent-free land, and which was alleged to have been held, as such, for many years before. The Court see no reason whatever, to doubt the genuineness of the above document. The attempt on the part of the defendant, to throw a doubt upon this deed, because it is not to be found amongst the official records, cannot be upheld, because the order of the British authority is written on the original petition, presented to him by the plaintiff's ancestor, (a practice then very common,) and there is no reason,

therefore, why the document should have been filed with the records. If the defendant had allowed the genuineness of this document, and had attempted to shew, either that the rent-free land referred to in it, had been resumed; or that *in addition* to this parcel of rent-free land, the plaintiff had *other* land for which rent was payable, the honesty of the plea would have been in his favor. But as he denied the genuineness of the plaintiff's document, and groundlessly so, the Court think, that this document furnishes the strongest presumption in favor of the truth of the plaintiff's statement of facts. They are of opinion, also, that this view of the case is upheld by the result of the first local inquiry that took place, and they look upon the second investigation, as bearing marks of the defendant's influence over the person deputed to report on the facts of the case. They accordingly decree for the appellant, with costs, reversing the decision of the judge.

THE 19TH MARCH 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 242.

In the matter of the petition of Kalee Persaud Hujrah, filed in this Court on the 7th May 1844, praying for the admission of a special appeal from the decision of the judge of West Burdwan, under date the 28th February 1844, reversing that of the moonsiff of Indos, under date 26th August 1843, in the case of petitioner, plaintiff, *versus* Ram Nurain Mittre, and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

The petitioner lodged a complaint in the foudaree court against Moheish Dass, Ram Dyal Mitter, and Ram Nurain Mittre, charging them with assault and extortion of 12 rupees. The case was decided by the principal sudder ameen, who fined Ram Dyal 10 rupees on proof against him [the other two being absent,] and gave the plaintiff permission to sue all three defendants in the civil court, as per roobikaree of 11th June 1839. Plaintiff, accordingly, brought this action in the moonsiff's court, on the 21st November 1840, who decided in his favor, awarding costs of the foudaree court, as well as the amount forcibly taken from the plaintiff.

The judge, in appeal, applied the provisions of construction 367 to the case, which he considered a bar to the entertainment by the civil court of the suit which was preferred. The principle laid down by the judge in his proceedings is opposed to practice, and also to the construction alluded to, which declares a civil action will not lie for recovery of costs of the criminal court, on the grounds specified in paragraph 2 of the construction quoted, but no where prohibits a party from suing for a sum extorted from him.

A special appeal is, under the above circumstances, admitted.

ORDERED :

That the case be admitted on the file, and returned to be tried by the judge, who will dispose of it on its merits.

THE 20TH MARCH 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 5 OF 1845.

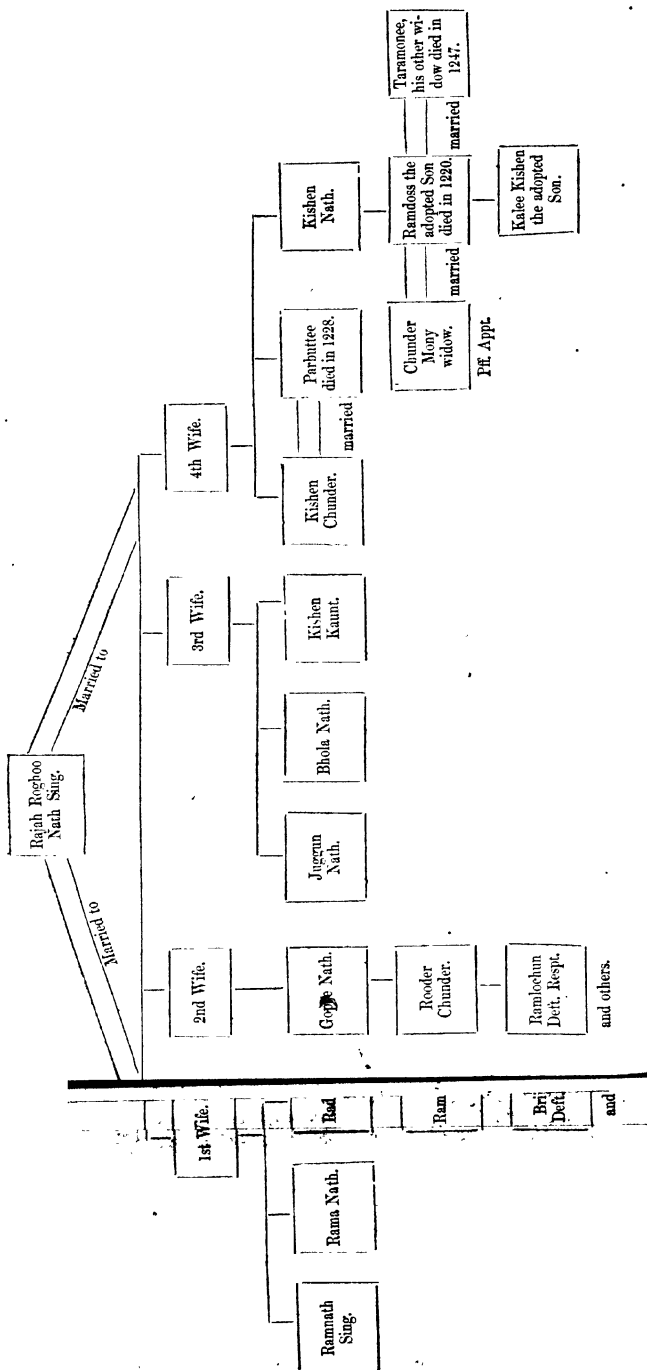
Special Appeal from the decision of the Judge of Mymensing.

RANEE CHUNDER MONEE, WIDOW OF RAJAH RAM
DASS, MOTHER OF KALEE KISHEN SING, MINOR,
(PLAINTIFF,) APPELLANT,

versus

RAJAH BIRJNATH SING, RAJAH RAM LOCHUN, AND
OTHERS, ABSENT IN APPEAL, (DEFENDANTS,) RESPONDENTS.

THIS suit was instituted, on the 19th March 1841, corresponding with 7th Chyete 1247 B. S., by the plaintiff, on the part of her adopted son, Kalee Kishen Sing, for succession to the property left



by Kishen Chunder Sing, the brother of her husband's father. The accompanying genealogical table shews the relationship existing between the parties. Kishen Chunder and Kishen Nath Sing, two full brothers, were equal sharers, $4\frac{1}{2}$ gundahs each, in the 2 annas share of pergunnah Sooseraj, the property of their father Rogonath Sing. Kishen Chunder died leaving a widow, Parbuttee, who succeeded, for her life time, to her deceased husband's share; and died herself in 1228 Sraon. Ram Dass Sing, son of Kishen Nath, plaintiff's husband, died in 1220 B. S., without leaving any children by either of his wives, but having previously granted permission to them to adopt a son. Taramonee died in 1247; and in Phalgun of the same year plaintiff adopted Kalee Kishen.

On the demise of Parbuttee in 1228 B. S., the $4\frac{1}{2}$ gundas share of Kishen Chunder Sing, her husband, was taken possession of by the heirs of Rogonath Sing's other sons. The present suit is to oust them in favor of plaintiff's adopted son.

The principal sudder ameen, on the 27th May 1842, and the judge, on the 22d May 1843, dismissed the claim under the statute of limitation, considering the cause of action to have arisen on the death of Parbuttee in 1228; and a special appeal was admitted, on the 19th December 1843, to try whether this was good law; the adoption not having taken place till 1247 B. S.

BY THE COURT.

If this case were to be decided solely on the principles of the Hindoo law, the Court would have to determine in the first instance whether there be any, and, if any, what limitation to the adoption of a son by a Hindoo widow. In this case however the plaintiff, assuming the right to adopt, comes into Court to claim on behalf of her adopted son, the restoration of property which passed, in consequence of her failing to adopt, into the possession of other branches of the family, 19 years before the institution of the suit, and up to the present time has been held by them under bonâ fide titles. Hence, it becomes a question whether the rules of limitation laid down in section 14, Regulation III. of 1793, do not bar this suit, quoad the possession of the disputed property.

Without reference to the validity or otherwise of the adoption, (which took place 27 years after the demise of plaintiff's husband,) the Court are of opinion, to quote the words* of Sir William Hay Macnaghten, "There can be little doubt that the rules of a positive enactment supersede the tenets of Mahomedan law," and also, as the Court hold, of Hindoo law. The claim therefore for possession cannot be entertained under the statute of limitation. In confirmation of the lower court's orders the appeal is dismissed with costs.

* Vide note, page 286, Mahomedan Law.

THE 26TH MARCH 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 171 OF 1842.

Special Appeal from the decision of the Judge of Zillah Cuttack.

GOPAL DAS SINDH, MAUN DATA MAHAPATER,

(DEFENDANT,) APPELLANT,

versus

NUROTUM SINDH, BUNMALEE SINDH, RAM SINDH,

AND NARAIN SINDH, (PLAINTIFFS,) RESPONDENTS.

JUDGMENT OF MR. A. DICK.

THE plaintiffs, respondents, sued the defendant, appellant, for their shares in a landed estate called Tuppa Malinge, purchased by their father, and for usufruct during dispossession. The defendant, appellant, admitted the purchase of the property in question by their and his father; but denied their claim to share in it, their father having by deed left the whole of the estate indivisible to him, as his eldest son; that afterwards their uncle, his father's brother, gave up his portion in the estate, receiving the price of it, as it had been purchased by him and their father conjointly. In proof of which, he produced a deed of arbitration of 15th Ughun 1238 Umlee, in which a former deed of arbitration is mentioned; but which, and a deed of relinquishment of claim, were not filed, being on taal putr (palm leaf) and unstamped. And subsequent to that, before a punchayet, the plaintiffs, respondents, gave him another deed of relinquishment of all claim, which he also filed. He further asserted, and produced witnesses residing on the estate to prove, that the property had always been indivisible in the family of the original proprietors, whose eldest son alone inherited, and took the title of Maun Data Mahapater;—that his father took up the title, and that he, appellant, likewise registered his name as proprietor, in the collectorate, with the title affixed; and had been alone in possession since 1225, when his father died; two of his brothers, the plaintiffs Bunmalee and Narain, acting as his surburakars.

The principal sudder ameen, disbelieving the documents of defendant, appellant, and assuming the estate to be divisible, because under the revenue settlement, and because it was a purchase, and sole heritage, no family usage of the parties, decreed the claim. The judge, in appeal, on much the same grounds, dismissed the appeal.

A special appeal was admitted in this Court, on the ground of usufruct having been improperly decreed, without specification of date of dispossession, and not included in the amount at which the suit was laid.

The plaintiffs, respondents, all defaulted by non-appearance; but another person, alleging himself to be a purchaser from them of the shares decreed to them, petitioned to be allowed to defend the suit in their stead.

The case was first brought to a hearing before Mr. Dick, who referred it to a full sitting—and the respondents were allowed to appear by their pleader.

The respondents claim on the Hindoo law of inheritance. The appellant denies their claim on four grounds—1st. The devise of the estate to him solely by his father. 2d. The relinquishment of all claim to it by the respondents. 3rd. His sole right to it by descent, according to local custom, under section 36, Regulation XII. 1805. 4th. Under the law of limitation, he having been in sole possession upwards of 12 years, before institution of suit. The appellant has been unable to establish his first allegation—the will of his father being on taal puttur, or palm leaf, and unstamped, and therefore not filed. He has also failed in proving satisfactorily his second ground, from unusual irregularities and omissions in the execution of the deed of relinquishment filed. His third ground, I consider valid and fully borne out. It is in evidence that the estate descended indivisible in the time of the original proprietors, whose eldest son took it alone, and assumed the title of it of Maun Data Mahapatrur; and not a particle of evidence in contradiction has been adduced. Again, the father of the contending parties, on purchasing the property, assumed the customary title, and the uncle who was in partnership with the father, when the estate was purchased, gave it up wholly to the appellant after the father's decease, taking other property and money instead of any share in it. Appellant was admitted to be sole proprietor of it by one of the respondents, Bunmalce, before arbitrators; and he registered his name in the collectorate as sole proprietor, with the customary title affixed. All these facts evince incontestibly what the local custom was, and how considered by the father, the uncle and the brothers, until the disagreements in 1247 Umlee. The law refers expressly to *local* custom, something the very reverse of gavelkind in England, and not to *family usage* as the lower courts have considered it. The family usage therefore, of the contending parties has nothing whatever

to do with the question at issue;—and, in the province of Cuttack, the law includes all estates in which the custom has prevailed; consequently, the objection of the principal sudder ameen, from the estate being under revenue settlement, is irrelevant and futile. The appellant's fourth plea, I also consider valid. He has shewn that he registered his name as sole proprietor, with the customary title of the estate affixed in the collectorate in 1233;—that his brother Bunnalee, one of the respondents, acted for him before arbitrators duly authorized by the magistrate, and declared before them that he was in sole possession;—that another brother of his, Narain, acted as one of his servants in the estate to collect the rents, and all this on indubitable documents; while the respondents have produced not a tittle of credible evidence to evince, they ever held possession as shareholders. I think all this, coupled with the fact of the custom of the estate, which must not be lost sight of, clearly show sole and undisturbed, good, and admitted by the adverse party, possession for upwards of 12 years previous to the setting up the claims in suit. I am therefore decidedly for rejecting the claims, reversing the lower court's decision, and decreeing the appeal with full costs.

JUDGMENT OF MESSRS. REID AND GORDON.

The respondents, four younger sons of Jugoo Sindh Mandhata Mahapater, sued the appellant, their elder brother, for possession of 4-6ths, or 10 annas, 13 gundas, 1 cowry, 1 krant of pergunnah Mulunch, pergunnah Bunchas, purchased by their father on 14th September 1814, or 22d Bhadoon 1221 Umlee, from Sheikh Fukeeroolla, stating the remaining shares to belong, 1-6th, or 2 annas, 13 gundas, 1 cowry, 1 krant, to the appellant, and a like share to Sham Churn Sindh, their second brother, who did not join them in the suit. They laid their suit at 1386-10-8, the sudder jumma of the share claimed, and prayed to be allowed to recover mesne profits.

The appellant, Gopal Sindh, resisted the claim on the following grounds. He asserted that the pergunnah was purchased by his father, as stated. That in 1224 Umlee, his father executed on tar leaf a deed of partition, or *tuksermunameh*, in the presence of several respectable persons, assigning the pergunnah in question, as his self acquired, not hereditary property, to himself, as the eldest son, and providing that his brother, Beer Buder Sindh, and his sons, should receive shares in the personal property, and a proportional share of the value of the estate from the appellant, and deposited the deed with Shistee Punda. That on his father's death in 1225 Umlee, he had his name duly registered without any opposition on the part of his uncle and brothers, as would have been the case had they been entitled to share in the pergunnah. That in 1237, his uncle took his share of the personal property, and executed a deed relinquish-

ing his claim to share in the estate; and that in 1244 the defendants also, after their dispute had been referred to arbitrators, executed a deed relinquishing their claim. He also asserted, that the estate had always been held by the former Hindoo proprietors, prior to the acquisition of it by Fukeeroolla, as a raj and indivisible estate, devolving on the eldest son, or male heir, consequently that the division thereof was barred by section 36, Regulation XII. 1805.

Sham Churn Sindh, the second brother, put in a petition, as a third party, denying the right of the defendant to hold the estate as indivisible.

The principal sudder ameen of Cuttack, Moolveo Gholam Russool, before whom the case came on, observed, that it was proved by evidence, that up to 1247 the plaintiff's, the defendant and the third party, sons by the same mother, had joint possession, and that defendant had failed to prove that the estate was indivisible under the old zumeendars; and that as it was neither a jungle mehal, nor a hill estate, nor a tributary one, that it should be indivisible under Regulation XII. 1805; that, it being a regular assessed estate, there was nothing to prevent a division; and, even admitting it to have been indivisible under the old zumeendars, when it was by them sold to Fukeeroolla, the custom would no longer hold. He further observed that the *tukseer-mumuch*, alleged to have been executed by the father of the parties, had not been filed; and, for the reasons stated in detail in his decree, considered the deed of renunciation filed by the defendant as unworthy of credit. Deeming, therefore, the plaintiff's entitled to their respective shares, he decreed in their favor, on the 7th October 1841, awarding them possession thereof, with mesne profits, during the period of dispossession, and costs.

The case having been brought by appeal before Mr. H. B. Brownlow, judge of Cuttack, he, for reasons similar to those urged by the principal sudder ameen, confirmed his decision on the 19th March 1842, and dismissed the appeal with costs.

Gopal Sindh Mandhata, still dissatisfied, applied to this Court for a special appeal, which was admitted by Mr. Reid on the 21st June 1842, because the suit for possession of the land, and mesne profits, had been laid at the amount of the jumma, without any additional valuation on account of mesne profits.

Though a special appeal was admitted in this case, only on a point foreign to the merits, it is necessary, according to the practice that prevailed in this Court, prior to the enactment of Act III. of 1843, to deliver judgment on the whole case. That case comprises the following points. 1st. What was the custom, in regard to succession, of the Hindoo family, who formerly possessed the estate, which forms the subject of the present suit? 2d. Supposing that custom to have been succession of the entire estate by the

eldest son, would that bar *division*, in the event of the estate passing to another Hindoo family, in which the practice of division existed? 3d. Admitting that the practice of indivisibility in the former family, does not bar division, in the latter, and that there are circumstances in the present case, which shew, that division is the rule in the family, what contingency alone would warrant the Court, to award the whole estate to the eldest brother, and does that contingency exist, or not? With respect to the first point, it may be admitted, that non-division was the practice. Neither party denies it, and the witnesses on both sides, speak to the fact, as indisputable. With respect to the second point, the law quoted in section 36, Regulation XII. of 1805, is silent; but the absence of any prohibition, and the spirit of Regulation X. of 1800, taken in connection with Regulation XI. of 1793, and with what seem to be the dictates of reason, lead us to pronounce a decided opinion, that a former practice of non-division, does *not* bar the practice of division, in the case supposed. That the legislature had no wish, strictly to enforce the rule of indivisibility in succession, is plain, from this, that even in those cases where this rule obtained, a proprietor might legally divide his property by will. This is clear from the wording of section 2, Regulation X. of 1800. But if the custom of indivisibility, might be broken through, even in those families, where it heretofore prevailed, what object could the legislature have, in interfering with the practice of division, known to obtain in any family? With respect to the third point, there can be no doubt, whatever, that division is the rule in the family, of which the respondents and the appellants are members. The appellant admits in his pleadings, that the property, which forms the subject of the present suit, was bought jointly by his father and uncle, and that this latter remained in the joint possession of his share, long after the death of his brother, renouncing his claim at last, to the appellant, for an equivalent. In like manner, it is admitted, that the respondents were to receive compensation for their shares. Under these circumstances, we are clearly of opinion, that no court ought to award possession of the whole estate to the eldest brother, to the exclusion of the younger brothers, unless there should be satisfactory evidence to shew, that their father had disposed of the property in this manner, or that the younger brothers had conveyed their rights in the property to the appellant. As to the first supposition, there is no proof whatever. Mention, no doubt, is made, by the appellant, of a deed of allotment, executed by his father, before his death, by which he (the appellant) was to get the whole of the disputed property, his uncle and brothers receiving an equivalent for their shares. But this deed is not forthcoming; and the execution of such a deed, is, to our minds, in the highest degree improbable. It will be observed, that the person alleged to have executed this deed, had no right to do so, without the consent of his brother, who possessed

nearly a half of the property, about to be disposed of. Under these circumstances, if a transaction of this kind, had taken place, it would have been an allotment, completed at that time. But even the appellant does not say this; and the sort of allotment alluded to, was one, which was to take effect, at some indefinite future time. We place no reliance whatever, on the alleged deed of renunciation by the younger brothers. It is positively denied by them; and the circumstances connected with it, impress us with the belief, that it is a forgery. The appellant states, that when setting out on a pilgrimage in 1243, he entrusted his brothers with goods and money, to the value of Rupees 50,000, for purposes of trade; and that on his return, as they had squandered this money, and could give no account of it, they gave up their shares of the property, under dispute, to him, by executing the deed in question. It is remarkable, that in making over this amount of property to his brothers, he does not appear to have taken any acknowledgment whatever from them. This is in itself incredible; but supposing it to be true, and that the animus existed in his brothers, to defraud him, (and this he insists on throughout,) why should they have executed the deed of renunciation, seeing that he had no means of proving, the receipt by them, of the large property deposited with them? There are other circumstances which seem fatal to the genuineness of this deed. No mention of it was made in the criminal court, into which both parties first carried their disputes. The witnesses to it are not relations or friends of the family, but persons picked up from some distance. The stamp was not purchased from the vender, who resides near the spot where the deed is said to have been executed, and it bears a date of purchase, no less than a year and a half before the date of alleged execution. Lastly, the deed was not registered. The only other document, filed by the appellant, in support of his claim, is the copy of an alleged award by arbitrators, dated the 15th Aghun 1238, in a case between him and the son of his uncle; this cousin, claiming his father's share of the property under dispute. The award is given in favor of the appellant; and his brother, Bunmalee Sindh, (one of the respondents,) is made to say, that his cousin's father had already received his share of the property under dispute, and had executed a deed of renunciation, in favor of the appellant, who is admitted by Bunmalee, to be the real proprietor of the disputed property. We may observe, that we place no confidence in the truth of the facts stated in this alleged award; and that even if they were true, with respect to the appellant's uncle, this would form no reason for depriving his brothers of their rights. In regard to the uncle, it is stated by the appellant, that he gave up his share of the disputed property in 1237. It seems extraordinary, if this were true, that *this uncle's* son, should immediately after such a transaction, claim his father's share, in total ignorance of that transaction. The respondents in

their pleadings, state, that their uncle, the appellant, and themselves, continued in joint possession of the disputed property from the time of their father's death, up to the year 1233, when their uncle, in lieu of his share of the disputed property, received another estate, called talookeh Nurainpoor, which all had held in joint property. It is remarkable, that the appellant nowhere in his pleadings, denies this specific fact, which we think bears the impress of truth; for if Nurainpoor had not been joint property, or if it had not been transferred, as alleged, the disproof of the double allegation, would have been easy. Accordingly, we have no faith in the alleged deed of renunciation, by the uncle in favor of the appellant; and it is a curious circumstance, that this deed has not been produced. But however the matter may stand, as between the appellant and his uncle, nothing short of full legal proof of the renunciation of their rights, by the younger brothers, can deprive them of those rights. It is true, that the name of the eldest brother alone was registered in the book of mutations, in the collector's office; but we are of opinion, that this was with the consent of the younger brothers, who did not on that account, lose their right of property in the estate, but on the contrary, received possession, in support of their right, of the original deed of sale executed in their father's favor. We accordingly, reject the appeal, with costs, confirming the decrees of the courts below, with the exception of those parts, which award mesne profits. As this part of the claim was not covered by a proper stamp, we can only decree mesne profits from the date of the principal sudder ameen's decision.

THE 26TH MARCH 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 165 OF 1844.

*Regular Appeal from the decision of Moolwie Looft Hossein Khan,
Principal Sudder Ameen of Jessore.*

GOORDASS RAI, &C., APPELLANTS,

versus

RANEE KUTTEEANEE, MOTHER OF SIREENURAIN
SINGH, DECEASED, RESPONDENT.

THIS is another case, originating in the decree of this Court, dated the 6th February 1834, which is referred to in the Case, No.

236 of 1843, decided on the 17th instant. It is only necessary to state, in explanation, that subsequently to the decree of 1814, and order of 1818, referred to in the said Case, No. 236 of 1843, pleas of different kinds were set up by those against whom the original decree of 1814 was passed. One was, that a large parcel of land claimed, as included in that decree, was in fact the rent-free land of the party cast. This formed the subject of a separate suit; and was finally decided by this Court, on the 6th January 1844, in favor of the present respondent. Another was, opposition to the amount of rent, which the present respondent, sued to impose, on a parcel of land, admitted to be included in the *kismuts*, originally decreed to belong to the respondent's *zemeendaree*. This formed the suit, decided finally, in Case No. 236 of 1843, as above mentioned. A third plea, was, that a certain quantity of land, claimed by the respondent, as included in *kismut* Gobra, one of those originally decreed, as belonging to the respondent's *zemeendaree*, did in fact belong to the present appellants' talookah, and was situated in *kismuts* Andharkota and Kulsea Khalee. This forms the subject of the present suit, which was instituted by the present respondent, in the *zillah* court of Jessore, on the 16th of December 1835, and was to recover possession of 649 beegahs 2 kutchas 15 gundas of land.

On the 19th June 1840, Hurreenurain Ghose, principal sudder ameen, decreed for the plaintiff, with costs.

On the 23d December 1842, Messrs. Lee Warner and Reid sent back the case, because the principal sudder ameen had decided, on the measurement papers of ameens, deputed previously to the institution of this suit. He was ordered to depute another ameen, to ascertain whether the land in dispute, was in Gobra, or in the talookah of the defendants, and to decide accordingly.

On the 18th March 1844, Moolvie Looft Hossein Khan, principal sudder ameen, decided for the plaintiff, with costs, allowing her to sue separately, for mesne profits. No documentary evidence was filed on either side; but the ameen reported, on the evidence of many witnesses, that the land belonged to *kismut* Gobra. This report corroborated the truth of two different reports submitted by two successive ameens, formerly deputed to enquire into this very point. Though the defendants had presented a petition, to have another ameen deputed, the principal sudder ameen, deeming this application to have vexatious delay for its object, rejected it.

The two points in the present case, are obviously these. Does the disputed land belong to Gobra? If it does, can that part of the principal sudder ameen's decree be upheld, which awards possession to the plaintiff? With respect to the first point, I see no reason to dissent from the judgment of the court below, especially taking into consideration, the vexatious and unjust opposition of the appellants, to the well founded claims of the respondent, as manifested in the

other cases between both parties, that have come to my notice. With respect to the second point, the terms of the decree of this Court in 1834, and of the previous decree of 1814, and order of 1818 restrict the judgment to be passed, to one of assessment. Accordingly, under the provisions of clause 2, section 2, Regulation IX. of 1831, I send back this case, that the principal sudder ameen, re-admitting it on his file, may modify his award, as I have pointed out. In other respects, I confirm the decree, rejecting the appeal, with costs.

THE 26TH MARCH 1845.

PRESENT :

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 286.

IN the matter of the petition of Ram Ram Beish, filed in this Court on the 29th May 1844, praying for the admission of a special appeal from the decision of the principal sudder ameen of Mymensingh under date the 28th February 1844, reversing that of the moonsiff of Mymensingh under date 23d May 1843, in the case of petitioner, plaintiff, *versus* Birj Mohun Dutt, and others (defendants.) It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued his nephew Bidenath Beish, and Birj Mohun Dutt and others, to recover possession of 2 annas of 12 annas, (divided into 16 annas) of talook Bonjais, and also 2 annas of a jote on village Kunchunpore, sold by his nephew, a sharer to the extent of 6 annas only: who, it is alleged however, sold his own 6 annas, and the above 2 annas disputed, to Birj Mohun and others. The defendants Birj Mohun, and others, pleaded they bought the 8 annas from Bidenath. Bidenath, in his answer, states the purchasers forcibly took from him a deed of sale of the 8 annas, although he, Bidenath, had only a 6 annas share.

The moonsiff, after full enquiry, and, so far as it would appear, on sufficient grounds, decreed in favor of the plaintiff, detailing, at length, the grounds of his decision above quoted.

The principal sudder ameen reversed this judgment in *general* terms, saying "it appears, from the papers, that Bidenath had 8 annas share, and sold it to the other defendants."

Under Act XII. of 1843, he should have been more explicit, and pointed out on what documents, and what proofs, he grounded his decision. A sweeping general reversal, such as that passed by the principal sudder ameen, can hardly be called a judgment, and is opposed to the practice of the courts. On this account I admit a special appeal.

ORDERED :

That the case be restored to the principal sudder ameen's file, and he be instructed to record fully, and distinctly, the grounds of his decision.

THE 26TH MARCH 1845.

PRESENT :

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 287.

In the matter of the petition of Radhamohun Ghose Chowdree, filed in this Court, on the 29th May 1844, praying for the admission of a special appeal from the decision of the judge of Jessore, under date the 23d February 1844, amending that of the principal sudder ameen of Jessore, under date the 8th April 1843, in the case of petitioner, plaintiff, *versus* Gudadhur Addie, and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff, as putnee talookdar of 4 annas of turf Ramnuggur, a wuqf mehal, in pergunnah Enadpore, in the Jessore district, sued the 12 annas proprietors of the said talook, viz. Gudadhur Addie, and others, for possession of a tank and its embankments, &c., called Sabhatee, alleged to belong to his putnee. The defendants claimed the tank as being in village Sabhatee, in their 12 annas share, and further stated that Rajah Burdakanth Roy and his ancestors always had the right of fishery in it.

Rajah Burdakanth, after this answer was filed, put in a claim to the right of fishery ; but failed to prosecute it, notwithstanding he was included amongst the defendants, on petition of the plaintiff subsequently given in.

The principal sudder ameen recorded his opinion, that the plaintiff's rights were established by the measurement papers of 1224 of

the collector Mr. Tucker ; also by butwareh papers of 1139 B. S., of the time of Rajah Sham Soonder Roy and Sookdeb Roy duly signed by them, and by a local enquiry held by the darogah, as well as by the evidence of (7) seven witnesses. He rejected the evidence of (3) three witnesses brought forward by Gudadhur Addie, and the others, and decreed in favor of the plaintiff. The judge, in his proceedings of the date above quoted, on the appeal of the rajah [the other defendants being absent] amended the principal sudder ameen's decree, to the extent of awarding the right of fishery to the rajah, "whose claim he considered established by the papers on the record." Having *amended* the principal sudder ameen's decision, it was incumbent on the judge to point out specifically wherein he considered that officer's investigation, or judgment, open to reversal ; and also to indicate the grounds on which his own decision was founded ; nothing less than such specification can satisfy the requirements of Act XII. of 1843. The omission must be supplied ; and a special appeal is admitted to enforce the practice of the courts.

ORDERED:

That the case be restored to the judge's file, who is to dispose of it in conformity with the above instructions.

THE 27TH MARCH 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 173 OF 1842.

Regular Appeal from the decision of the Judge of Zillah Tipperah.

RAMDAS CHUKURBUTTEE, KALEE DAS CHUKURBUTTEE, DYA RAM, MOOST. MUHEYSHURREE AND MOOST. KOOKEE, APPELLANTS, (DEFENDANTS),

versus

PRAN KISHUN DEYB, RESPONDENT, (PLAINTIFF).

THE respondent sued the appellants, Ramdas and Kalee Das, for having enticed away Dya Ram, Muheyshurree and Kookee, his slaves, laying his suit at 150 Company's rupees. He purchased the parents of those three appellants in 1217 B. Æ., and they lived with him in slavery and begot these children, who were enticed away in 1243 B. Æ., when respondent applied to the magistrate's court, and

obtained an order for recovering them back; but they were not forthcoming.

The appellants, Dya Ram, Muheyshurree and Kookee, declare they never were slaves, and are ryots of the other two appellants, Ramdas and Kalee Dass, who assert the same.

The respondent produced his deed of sale, and other evidence, on which it appearing proved that the above three appellants were his slaves, the judge decreed in his favor, ordering them back into slavery; and the costs of suit to be paid by the other two respondents, Ram Das and Kalee Das.

In this Court in appeal, the appellant's pleader contended, that as his clients themselves were not purchased, they could not be slaves merely on account of their parents having been bought slaves, and cited Regulation X. 1811, Regulation III. 1832, and Act V. 1843, as entitling him to a favorable decision.

The regulations cited by the appellant's pleader are totally irrelevant; and the Court seeing no reason for interference with the decision of the judge, dismiss the appeal with costs. They however observe that the judgment of the zillah court, unless already executed, cannot now be enforced with respect to the persons and services of the alleged slaves under section 11, Act V. 1843.

THE 28TH MARCH 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 51 OF 1844.

Special Appeal from the decision of the Additional Judge of Behar.

SYUD AMANUT HOSSEIN, PLAINTIFF (APPELLANT,)

versus

MUSST. FATIMAH, MUSST. KULMUN FOR SELF AND FOR
BAHOREE, HER MINOR SON; MUSST. DOOLAREE AND
MULLICK AMEER ALLEE, (DEFENDANTS) RESPONDENTS.

THE plaintiff, on the 18th February 1840, brought this action for possession of a half share in the farm of village Sogaon, per-

gunnah Ekeil, and an equal proportion of the mesne profits on it for the year 1246 Fuslee. The suit is laid at Company's rupees 1702 annas 11.

The plaint sets forth that Musst. Fatimah and Mussumat Kulmun, through their relative, Mullick Ameer Allee, borrowed 1000 rupees from plaintiff, giving him and Ameer Allee, a farm for 9 years from 1246 to 1254 Fuslee of the village Sogaon. Plaintiff states the pottah, dated 29th Sraon 1245, was made over to him (as he made the whole advance) by Ameer Allee, who had a half share, and verbally agreed to pay him the 500 rupees he had advanced on his account, by profits on his half share, which plaintiff was to collect. He goes on to say, he under-let his half share to Asgur Allee, against whom he obtained decrees for balances due and attached his property, when Ameer Allee claimed, in the moonsiff's court, 12 annas of the farm, and stated 4 annas only belonged to plaintiff. Disputes arose between Ameer Allee and plaintiff, in consequence of which resort was had to the foudaree court, when the magistrate referred them to the civil court.

The defendant, Ameer Allee, in answer, states a pottah was prepared in his name, and in that of plaintiff, as joint sharers in the farm, of 12 annas and 4 annas respectively, and a kuboleut was also drawn out on the same day; but that on the receipt of news of the sale of village Sogaon, for Government balances, the agreement was not carried out, and he threw up the farm, having himself made the whole amount of advance.

The defendants, Musst. Fatimah and Musst. Kulmun, allege they never received a fraction from either plaintiff or Ameer Allee. That a proposal to take a farm was made by them, and Ameer Allee had the documents prepared in names of plaintiff and himself; but on the news of the sale of Sogaon the agreement was not carried out. The documents were in the hands of Nonneyd Roy, their servant, and plaintiff, by some means, got them from him.

The principal sudder ameen, on the 16th December 1841, records as follows.

The plaintiff cannot prove payment of the advance. His witnesses are strangely at variance. Witnesses cited by both parties do not prove the claim. The name of one Hyat Allee on the pottah is clearly an interpolation. I dismiss the plaint.

The additional judge of Behar, on the 3d March 1843, reversed the principal sudder ameen's decision, considering the pottah filed by the plaintiff, in the light of a receipt for the advance. He was of opinion that the plea of the pottah having been taken from Nonneyd Roy, was not good, or complaints would have been lodged in some of the courts. As to the discrepancies in the evidence the additional judge did not consider them very material; he therefore decreed 500 rupees, with interest from date of execution of the pottahs to date of realisation, with costs and interest in favor of the

plaintiff, recoverable from the defendants. As plaintiff did not get possession of the farm, he rejected that part of the plaint which applied for possession of it.

A special appeal was, on the 19th July 1843, admitted by Messrs. Tucker and Reid, to try "whether, under the circumstances stated in the additional judge's decree, the plaintiff, appellant, was not entitled to possession, with wassilat, instead of merely getting back part of the amount advanced."

The Court observe, that the additional judge being satisfied that the transaction between the parties was a bonâ fide one, it was incumbent on him to decree possession with wassilat as claimed by the plaintiff. They therefore annul his decision, and direct that possession be given to the plaintiff for the period of his lease, and award mesne profits for the year 1246, and subsequent years, to be fixed, in execution of this decree, after due enquiry.

THE 28TH MARCH 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 41 OF 1844.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Jessore.*

MESSRS. HILLS, WHITE, AND CO., (PLAINTIFFS,) APPELLANTS,
versus

KHOODA BUKSH BISWAS, GOLABOODEEN BISWAS,
AND DHUR BISWAS, SON OF KHOORZ BUKSH, DE-
CEASED, (DEFENDANTS,) RESPONDENTS.

THIS suit was instituted, on the 15th August 1842, for 9504 rupees, being the amount of loss sustained by the plaintiffs by a breach of an engagement, executed on the 27th April 1830, which was entered into by the defendants with the plaintiffs. The

plaint states that disputes existed between the parties, regarding the lands appertaining to Bhalaiepore, &c. an indigo factory, the property of the plaintiffs, and Soonderpore factory, that of the defendants. The agreement in question, executed by both parties, laid down a boundary line between the factories, which was to be held inviolate, and bound them mutually to indemnify, either the other for loss sustained by the infringement of the said agreement. The defendants further bound themselves to close their factory Soonderpore, should they overstep the boundary line.

The plaint then alleges that, in the past year, the defendants, in violation of the agreement, did sow 150 beegahs of indigo land in the villages Pranpore and Soonderpore already advanced for by the plaintiffs, as well as 400 beegahs in villages Kafiladaer, Juggernathpore, &c., making a total of 550 beegahs, which they calculate would have produced 52 maunds, 32 seers of manufactured indigo, and which, at 180 rupees per maund, would realize 9504 rupees, the amount claimed under the plaint.

The defendants, amongst other pleas, urge, that they never executed the engagement put in by the plaintiffs, which moreover they allege does not define any boundary line as stated; further that the plaint is defective, inasmuch as it does not give the boundary of the lands which they (defendants) are charged to have cultivated in violation of the said agreement; and, finally, that the damages sued for are excessive, as their own factory Soonderpore, in the year in question, only produced 13 maunds of indigo.

The principal sudder ameen, on the 10th June 1843, considering the engagement put in by the plaintiffs not proved, dismissed the claim, which led to the present appeal.

The terms of the agreement affecting this case are as follows: The indigo lands belonging to the factories of both parties being intermixed in the villages Pranpore and Soonderpore, it was agreed the defendants should continue to hold 1113 beegahs therein as detailed in an account, specifying each plot, given in to the magistrate, and they (defendants) bound themselves not to interfere with the remaining lands in those villages. The agreement further alludes to a boundary line between the factories of the parties, but does not contain the names of the villages (with exception to Shahazpore) on either side thereof, and closes with the condition that either party, infringing the terms of it, shall make good to the other the actual loss sustained by violation of it.

The Court see no reason to doubt the execution of the agreement by the defendants, but observe it only goes to prove the existence of a mutual engagement between the parties; and that it is incumbent on the party claiming compensation for the violation of it, to prove specifically the amount of his alleged loss. In this respect the Court remark that the evidence of the plaintiffs is altogether insufficient. With regard to the 150 beegahs in Pranpore and Soonder-

pore there is no evidence to shew to what party they belong; it has already been shewn, as stated in the agreement, that the indigo lands in them are intermixed. The statement alluded to in the engagement, defining the 1113 beegahs which were to remain in defendants' possession, has not been produced, so that the Court cannot determine whether the 150 beegahs form part of them or not; the witnesses know nothing of the details of the adjustment between the parties, but merely the general outline.

With regard to the 400 beegahs in Kafiladaer, Juggernathpore, &c., the Court find no such villages specified in the engagement; and they observe that the term "etcetera" is altogether, in a claim of this nature, inadmissible.

As to the claim for compensation, the Court remark that the plaintiffs have furnished no proof of the amount of actual loss they have sustained. They estimate it at 9504 rupees, the probable sale proceeds of 52 maunds, 32 seers of manufactured indigo, the produce of 550 beegahs of land, but fail to establish it. Neither do they lay down the boundary of the lands they refer to; whilst their witnesses speak in the matter at issue only in vague and general terms, and from hearsay.

Under these circumstances the Court do not find a breach of engagement by the defendants proved; they therefore affirm the decision of the lower court with costs.

THE 28TH MARCH, 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 54 OF 1843.

*Regular Appeal from Principal Sudder Ameen of Moorshedabad.
Balance of Company's Rs. 9709, As. 7, Pie 6.*

MOTEE CHUNDER BABOO, (PLAINTIFF,) APPELLANT,

versus

BEEJYE GOBIND BURRAL, FOR SELF AND FOR JUDDOO
NUNDUN, MUDHOO SOODUN, AND MUDDUN MOHUN,
MINORS, AULIM CHUNDER DHUR, FATHER OF KALEE
DASS DHUR AND SREENATH, MINORS, (DEFENDANTS,) RESPONDENTS.

PLAINTIFF, who brought this action, on the 8th January 1841, or 29th Aghon 1247 B. S., states as follows.

On the 5th Bysack 1241, Beejye Gobind borrowed 2201 rupees from me, and entered the debt in my books at Jungheepore. On the 10th idem Beejye Gobind and Aulim Chunder, styling himself guardian of Kalee Dass, wrote a letter, signed by them both, to the effect that 6000 rupees were to be given to Aulim Chunder to pay the malgozaree of the joint estate of Beejye Gobind and Kalee Dass, and to defray other expenses, for which Beejye and Kalee Dass held themselves responsible; and 1300 rupees were taken away by Aulim Chunder on the same day. From the 16th Bysack 1241 to the 9th Assar of that year Beejye and Aulim took 1837 rupees, and wrote that amount down in my books. From first to last they got 5338 rupees from me, and paid on the 7th Bysack 1241, the sum of 25 rupees, and, on the 15th of the same month, a further sum of 444 rupees, making a total of 469 rupees, through Lukhun Deb.

On the 24th Cheyte 1241, Beejye and Aulim came to my house at Jungheepore, where Aulim, with the permission of Beejye, acknowledged, in the presence of witnesses, a debt of rs. 5417 as. 14 pie 1 principal, and signed his name in my books. On the same day Beejye and Aulim as guardian of Kalee Dass, signed a stamped agreement, acknowledging large sums were due to me; and stipulating their debt, with interest thereon, was to be realised from the proceeds of their estate, which was regularly to be made over to me. This agreement I now hold.

They have never paid any part of this amount. I therefore sue for Sicca rs. 5417 as. 14 pie 1 principal,—rs. 3684 as. 12 interest, from Bysack 1242, to date of plaint, and interest on the same to date of realization—total rs. 9102 as. 10 pie 1.

The defendant, Kalee Dass Dhur, in answer, states: I know nothing of plaintiff's claim, if Beejye Gobind borrowed from him, he is responsible. Kirtee Chunder Dutt, my mother's father, had an estate called Dehee Goorkur, to which Beejye and his brothers, and I with my brothers, succeeded in 1240 B. S. I and my brothers, and also Beejye's brothers, were at the time minors; he was of age and managed the estate. Nearly 90,000 rupees, collected on it by former managers, were in the hands of the collector. Why should money be borrowed for payment of Government revenue? My father, on application of my mother, was appointed guardian in Assin 1241 only; and had no authority whatever to sign on my account in the month of Bysack previous.

The defendant, Beejye Gobind Bural, urges, that it is quite unusual for a party, in matters of such large amount, to act on a mere letter. That under the terms of the letter, moreover, the minor is bound to pay, or Aulim by whom the money was taken. Defendant also states, that Kalee Dass's mother signed on all necessary occasions for him before Aulim was appointed his guardian; that he did not give Aulim permission to sign, nor had he any

authority to grant such permission to sign the account books. That if he did give him permission, there could be no necessity for his (defendant's) writing off the total a second time. He further pleads, that large sums belonging to the estate were in the collector's hands; and that there was therefore no necessity for borrowing money to pay Government revenue; and concludes with denying any money transactions with the plaintiff.

The plaintiff replies that Aulim acted as guardian of his minor son long before he was regularly nominated; and states the Burrals offered to settle with him after the case had come on.

At this stage of the proceedings the defendant, Aulim Chunder, put in the following answer: I was sick, and never went to Jungeepore on the 5th Bysack 1241. If Beejye Gobind borrowed the money he is of course responsible. The story of the letter of the 10th idem is quite improbable. Beejye Gobind was sole manager. I was not guardian of Kalee Dass at that time, but was appointed subsequently in Assar of that year. I never signed the book, nor borrowed money from the plaintiff.

A supplementary plaint was filed by the plaintiff, stating that the writer of the original plaint had omitted to insert the name of Aulim Chunder as one of the parties who took the sum borrowed on the 5th Bysack 1241.

The principal sudder ameen, on the 10th December 1842, dismissed the plaint, recording his opinion as follows.

Of the two witnesses named by the plaintiff, as evidence to the acknowledgment in the khata books, one, Dwarkinath Dey, denies all knowledge of any monetary transactions between plaintiff and defendant; the other, Dwarkinath Sein, states they took place in Kartik and Aghon 1240, whereas the plaint alleges they were in 1241. A second list of witnesses was given in by plaintiff on which Dole Gobind and Thakoor Dass Dey were examined; they depose to nothing satisfactorily. Thakoor Dass denies all knowledge of the matter. Dole Gobind states one Tajoo Sheik took the money from plaintiff on account of the defendant; whereas plaintiff's books make no mention of the said Tajoo. Plaintiff does not shew on what authority Aulim signed for Kalee Dass; on the other hand the latter produces certain documents, which prove Aulim was not manager on his account. The (ikrar) agreement referred to by plaintiff has not to the present day been filed. He has failed to produce any further witnesses; nor has he applied even now for their production. I therefore dismiss the plaint.

The Court see no reason to interfere with the judgment passed by the principal sudder ameen, which they accordingly confirm, and dismiss the appeal with costs.

THE 29TH MARCH 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 28.

IN the matter of the petition of raja Mahtab Chunder, filed in this Court, on the 9th February 1844, praying for the admission of a special appeal from the decision of Syud Hossyn Buksh, principal sudder ameen of West Burdwan, under date the 16th November 1843, confirming that of Mahomed Ibraheem, moonsiff of Bishenpoor, under date 28th May 1840, in the case of Bishen Nath Patoodie, plaintiff, *versus* the petitioner, defendant.

It is hereby certified that the case is sent back to the principal sudder ameen on the following grounds. The case was tried by the moonsiff *ex parte*. An appeal preferred by the raja was, in the first instance, thrown out by the judge, as preferred beyond the prescribed period; but was re-admitted, on a review of the order throwing it out, with the permission of this Court, and placed on the file of the principal sudder ameen, who, without requiring the raja to shew cause why he did not defend the suit in the moonsiff's court, proceeded to try the case on its merits. This mode of proceeding being in violation of the Circular Order of 12th March 1841, the Court are of opinion that the special appeal should be admitted, and the case sent back to the principal sudder ameen, with instructions to proceed according to the Circular Order in question. The Court direct accordingly.

THE 29TH MARCH 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 29.

IN the matter of the petition of raja Mahtab Chunder, filed in this Court on the 9th February 1844, praying for the admission of a special appeal from the decision of Syud Hossyn Buksh, principal sudder ameen of West Burdwan, under date the 16th November 1843, confirming that of Mahomed Ibraheem, moonsiff of Bishen-poor, under date 15th March 1841, in the case of Bishen Nath Patoodie, plaintiff, *versus* the petitioner, defendant.

It is hereby certified that the case is sent back to the principal sudder ameen on the following grounds. The case was tried exparte by the moonsiff, and an appeal preferred therefrom was referred to the principal sudder ameen, who trying the case with that just disposed of on petition No. 28, tried the case on its merits, without calling on the raja to shew cause why he did not defend the suit in the moonsiff's court. This mode of proceeding being in violation of the Circular Order of the 12th March 1841, the Court are of opinion that the special appeal should be admitted, and the case be sent back to the principal sudder ameen, with instructions to proceed according to the Circular Order in question. The Court direct accordingly.

THE 31ST MARCH, 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 157 OF 1843.

*Regular Appeal from a decision of the Principal Sudder Ameen of
Tirhoot, passed April 18th, 1843.*

MUSST. SOORJA KONWUR, WIDOW OF BABOO OODA
SINGH, APPELLANT, (PLAINTIFF,)

versus

MOOTEE SINGH, RESPONDENT, (DEFENDANT.)

THIS suit was instituted, on the 30th of September 1842, by appellant, to recover from respondent the sum of nine thousand nine hundred and fifty rupees, eight annas and one pie (Company's rupees 9,950-8-1) principal and interest, on a bond, dated 27th Kartik 1247 F., executed by respondent in favor of appellant, on adjustment of a former debt of Company's rupees 10,666-10-8, due on a bond granted by respondent to Dhoond Bahadur Singh, a relative of the husband of appellant. Of which debt 3,000 Company's rupees were paid to appellant, 266-10-8 were relinquished, and the balance of 7,400 stipulated to be paid by the bond now before the Court.

The defendant, in answer, pleads, he never took a loan from either Dhoond Bahadur Singh, or the plaintiff, nor did he execute any bond in their favor.

The principal sudder ameen dismissed the claim, because the bond in question does not bear the seal or signature of the kazee, and is not registered; because it is alleged to have been given six years after the case, in which the former bond was the ground of action, was struck off the file,—there appearing no motive for the execution of this second obligation; because the stamp paper is not of the nature used for bonds; and because the manner in which the witnesses deposed before him threw suspicion on the transaction generally.

The Court observe, this is a case the decision of which rests altogether on the consideration due to the witnesses. Although the lower court has impugned their evidence, the principal sudder ameen

has assigned no reason for throwing discredit on it, nor can the Court discover any: they therefore reverse the decision of the principal sudder ameen, and decree the appeal with costs chargeable to the respondent.

THE 31ST MARCH 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 3 OF 1844.

*Special Appeal from a decree of the Officiating Judge of Zillah
Bhagulpore, dated 15th May, 1843.*

RAJAH JYE MUNGUL SING, APPELLANT, (DEFENDANT,)

versus

GOSAEN MUHEEPUT POOREE, HEIR OF GOSAEN
TEELUK POOREE, DECEASED, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted, on the 3d August 1841 A. D., by the respondent, to recover from the appellant, the sum of Company's rupees 1302-2-1, being the amount, principal and interest, due on a bond, dated 3d Assin 1231 F. S., corresponding with the 23d September 1823, said to have been executed by the appellant's father Rajah Nuwaub Sing to Gosaen Teeluk Pooree, for money advanced by the latter to the former.

The case was referred to the principal sudder ameen Mahomed Majid. The plaintiff, in bar of the statute of limitations, urged a payment in part as late as the 16th Magh 1238 F. S., corresponding with the 14th January 1831, which was recorded on the back of the bond.

The bond was disputed by the appellant.

On the 9th June 1842, the principal sudder ameen dismissed the case; recording his opinion that neither the payment of 1238 F. S., nor the bond itself had been proved.

On appeal, the officiating judge, Mr. Irwin, reversed the decision of the principal sudder ameen; stating that the statute of limitation

was no bar to the hearing of the suit, as the latest payment recorded on the back of the bond, viz., 16th Magh 1238 F. S., was little more than ten years from the date of institution of suit.

The judge then recorded his opinion that the original transaction was proved to his satisfaction, and that a payment of rupees 51, on the 5th Jeyt 1236 F. S., had also been proved by the evidence of Teeroo and Jowahir witnesses. He therefore decreed for appellant (respondent before this Court).

On the 19th December 1843, a special appeal was admitted by Mr. Charles Tucker, on the ground that the only payment recorded as proved by the officiating judge, being so far back as 5th Jeyt 1236 F. S., corresponding with 23d May 1829 A. D., a period of upwards of 12 years had elapsed from that time before the suit was instituted, viz. 3d August 1841, and, consequently, the claim should have been thrown out on that ground alone, without entering on the merits of the case.

The case came on for hearing this day; and the vageel of the appellant urged that the declaration in the officiating judge's decree, that the payment made in 1236 F. S., had been proved, was obviously a clerical error, and did, in reality, refer to the payment of 1238 F. S.

The Court find mention made of four different payments on the back of the bond, viz.

5th Phalgoon 1232 F. S.,	Sa. Rs.	50
15th Poos 1234 F. S.,	„	51
5th Jeyt 1236 F. S.,	„	51
16th Magh 1238 F. S.,	„	52

and that the point to be established by the original plaintiff, after proving the bond, is the last mentioned payment; the other three being all dated upwards of twelve years before the suit was instituted.

Under these circumstances, the Court observe that the decision of the officiating judge in its present form is incomplete; for, taking the 16th Magh 1238 F. S., to form the ground of action as he does, it was incumbent on him to take evidence to establish the payment said to have been made on that date; the proof of any of the other three mentioned payments being insufficient for the admission of the suit.

The case is therefore returned to the judge; who will, after due enquiry, record, distinctly, whether he considers the payment of 16th Magh to be proved, or otherwise, and pass orders accordingly.

THE 14TH MARCH 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 17 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen of
Midnapore.*

RAJAH OOJOODIYA RAM KHAN, APPELLANT,

versus

RAJAH RAMCHUNDER KHAN AND OTHERS, RESPONDENTS.

THE respondents state, that their father, Rajah Mohun Lal Khan, on the 29th July 1807, purchased at a sale for arrears of revenue, Hooday Mirza Marce, Damooderpoor, 100 mouzahs, in pergunnah Chuttooa, sudder jumma 20,001 rupees; and, on the 22d February 1815, Poorub Juggernathpoor, in pergunnah Cashee Jora, sudder jumma 2,165 rupees 11 gundas. The respondents refer to the will in the case No. 302 of 1841. The property in the present case, as being under the jurisdiction of the Court of Wards, was allowed to remain in the possession of the appellant. Therefore the respondents brought a suit in the zillah court of Midnapore, on the 25th January 1841, claiming the half of the property as their right and laying their action at rupees 97,475-13-15.

The appellant replied, that he claimed the whole of this property also, as included in the will of his father, and on the same grounds urged by him in the other case, No. 302 of 1841, of this Court.

Ram Mohun Raie, the principal sudder ameen, on the 2d October 1841, passed a decree for the respondents, with mesne profits and costs, referring to his decision in the former case, for the grounds of his judgment in this.

From this decision the Raja, Ajoodea Ram Khan, preferred an appeal to this Court.

This case, in the opinion of the Court, involves the consideration of three questions. 1st. Whether the property, which forms the subject of the present suit, is included in the will of Mohun Lal Khan? 2d. Supposing it to be included in the will, whether the testator devised it to his eldest son? 3rd. Whether he was competent so to devise it? With respect to the first question, though the disputed property is not specifically named, the words are yet so clearly indicative of its being included in the will, as to leave no doubt on the subject, in the mind of the Court. Indeed, this fact is distinctly admitted by the respondents in their pleadings, and they may be said to have sued for this very property under the will. It has been argued, that the Court have held in their former decision, that the will comprehended only the property acquired by Mohun Lal Khan, by a deed of renunciation, from the heirs of Rajah Ajeet Singh. But this is a misapprehension of the Court's meaning. They never intended to express an opinion, that the property now disputed, is excluded from the will, but to state, that Mohun Lal's hereditary property, which had descended to him, is so excluded; and the mention of this latter property, as excluded, was made, to shew, that the words in the will, "my family," or "our family," referred to the family of Ajeet Singh. With respect to the second question, the Court have already answered it in the affirmative; but as, on farther consideration, they have seen reason to extend the meaning of what they regarded as a warning, and as this extension of meaning, is not at variance with the conclusion to which they formerly came, they think it proper, to give here, their construction of the will. They would premise, that they consider it to be their duty, as a Court, deciding upon broad and general, and not on narrow and technical grounds, to be most cautious, in allowing, a subsequent clause of a will, to contradict and nullify, what is previously and repeatedly stated in the deed, to be the will and intent of the testator.

They think, too, the greater caution is necessary, in giving effect to the interpretation of a clause, which nullifies what goes before it, when the object contemplated by the nullifying clause, could have been more easily attained, by the testator's not writing any will at all. Proceeding upon this principle, the Court give, what appears to them to be the meaning of the will. It is admitted on all hands, that in the first part of the will, the testator's eldest son is recognized as the heir of all the property comprised in the will. It is given to him, guardians are appointed for him, and they are told, that when he comes of age, they are to make over the property to him, and his name is to be registered as proprietor, in the collector's books, or what is technically called in this country the register of mutations. Then comes the clause, that this eldest son as proprietor will manage to the satisfaction, or with the con-

currence of the other brothers: if dissension should arise, which God forbid, then according to the shastres, they (that is, the brothers) will take their shares. The meaning of these words, cannot, in the opinion of the Court, be, that if concurrence be withheld, then I Mohun Lal *will*, that a division shall take place, for not only do the words not naturally bear such an interpretation, but so far from wishing or desiring such a consummation, he uses the strongest deprecatory language, obviously considering, that such a result would be the destruction of the family. The meaning seems rather to be, that if the younger sons did not concur, they would, according to the shastres, have a right to a division; implying, that however much this result might be against the testator's wishes, he could not prevent it. The Court are of opinion, then, that it was the will and intent of Mohun Lal Khan, to leave all his property mentioned in the will to the appellant, his eldest son, he managing the same as had been usual with the chief of the family of Ajeet Singh, though from the latter clause of the will above described, the testator seemed to be ignorant of his legal power so to dispose of his property, except under particular circumstances. This ignorance of Hindoo law, on the subject of inheritance, is, it is to be observed, very common. With respect to the 3d question, that Mohun Lal could devise his property to his eldest son, legally, the Court entertain no doubt whatever. It has been unanimously ruled in the affirmative by the Judges of this Court, in their correspondence with the Judges of the Supreme Court, when consulted by the latter on this very point. They accordingly decree for the appellant with costs, reversing the decision of the principal sudder ameen. The Court, direct, likewise, that a copy of this decision be put up with that passed by them in the case, No. 302 of 1841.

It may be as well to remark that the pleaders for the respondents in this case, asserted, that there had been a compromise entered into between both parties, after an appeal had been instituted in this Court, and they moved the Court to receive an alleged draft of a compromise, and to act upon the same. As this alleged compromise was denied by the other party, the Court did not conceive they were competent to comply with the respondents' wishes.

As an appellate court, they cannot investigate into the truth of facts, not forming a part of the case, originally gone into and decided by the court below.

THE 1ST APRIL 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 161 OF 1844.

*Regular Appeal from a decree passed by the Principal Sudder Ameen
of Patna, E. DaCosta, February 22d, 1844.*

SYUD GHIOLAM NUBBEE, (DEFENDANT,) APPELLANT,

versus

SYUD ABDOOLLAH, (PLAINTIFF,) RESPONDENT.

THIS suit was instituted, by respondent, on the 23d of August 1841, to recover from appellant the sum of five thousand five hundred and ninety-eight rupees (Co.'s Rs. 5598) principal and interest, on a bond, bearing date the 15th Bysakh 1244 F. (corresponding with the 5th May 1837,) executed in adjustment of a debt, due under a former bond bearing date the 30th Magh 1236 F., amounting to Company's rupees 3,653-13-10.

The original loan, and execution of the bond acknowledging it, and promising payment with interest at the rate of 12 per cent. per annum, in a given period, elapsed before the institution of the suit, being established by the evidence of the subscribing witnesses and others, the principal sudder ameen decreed in favor of the respondent, with costs payable by appellant.

In appeal, the judgment was affirmed, on the grounds on which it was passed by the lower court; the evidence, impugned by appellant, being regarded as satisfactory and conclusive.

THE 2D APRIL 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 296.

IN the matter of the petition of Kyfaet Allah and others, filed in this Court, on the 3d June 1844, praying for the admission of a special appeal from the decision of the judge of Dinagepore, under date the 6th February 1844, affirming that of the moonsiff of Kaleeagunge, under date 27th May 1843, in the case of petitioners, plaintiffs, *versus* Wullee Mahomed and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiffs sued to enforce an agreement styled "furdee" by which the defendant, Wullee Mahomed, bound himself, as alleged, to pay 222 rupees 8 annas 17 grundas, collected by him when putwaree on part of plaintiff and applied to his own purposes. Wullee Mahomed, putwaree, defendant, admitted he had signed an agreement, but was forced to do so.

The moonsiff dismissed the plaint, because the plaintiff spoke of and filed a "*furdee*" before the collector in the summary suit which he brought against the defendant; whereas he filed an agreement on (3) *three* separate pieces of paper in his, the moonsiff's, court, assigning also other reasons for his dismissal.

The Judge confirmed this decision; but it does not appear that the (furdee) engagement filed in the record was, as it should have been, acknowledged or denied by the defendant. If the engagement, on which the action was brought, was denied, the plaintiff should have been called on to prove it and then the validity, or otherwise, of the other grounds, on which the decisions of the lower courts rest, would have to be considered. The investigation of this case is incomplete, in as much as the defendant should have been required either to deny or admit the engagement filed. Such is the practice of the court, which in this instance has not been adhered to. A special appeal is therefore admitted. Let the case be returned for re-trial by the judge, with instructions to carry out the orders of the Court and to pass such judgment, on review of the record, as he may deem just and proper.

THE 3D APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 298 OF 1842.

*Special Appeal from Judge of Dacca, appeal laid at 943 Rupees
15 Annas 18 Gundas.*

ABDOOL GHIAFOOR, (DEFENDANT,) APPELLANT,

versus

GOPEE MOHUN RAY, DECEASED, GOBIND CHUND RAY,
ANDER MONEE CHOWDRAIN, MOTHER OF RAY
MOHUN AND RADHA MOHUN, MINOR SONS OF GOPEE
MOHUN, (PLAINTIFFS,) RESPONDENTS.

THE plaintiffs instituted this suit, on the 9th July 1836, or 27th Assar 1243, for rents due by the defendants, on account of the years 1231 to 1241, both included, due on their 6 annas 8 gundas share of talook Nuzzer Mahomed Komeidan, Tuppah Hajee Khanpore, in pergunnah Chur Mokoondea, an estate recorded in the names of the plaintiffs and Jenow Kishen Ray, and others, laying their action at 1391 Sicca rupees 6 annas 10 gundas, principal and interest.

The defendants, Abdool Ghafoor and Abdool Shokoor, state, the talook referred to at a jumma of 174 Sicca rupees 9 annas, was in the name of Nuzzer Mahomed, their ancestor, in plaintiffs' estate. That they regularly paid their rents to the plaintiffs and their co-sharers; getting receipts for the same. That the plaintiffs sued them summarily, in 1242, for balances of that year, and obtained a decree for the same. They urge plaintiffs cannot now claim rents antecedent to that date; and that others have been made defendants collusively, though the talook is their own sole property.

Plaintiffs, in reply, pleaded that Shakir and others, were also proprietors; and that a decree was passed against them also in the summary suit alluded to.

The principal sudder ameen, on the 12th July 1838, decreed for the plaintiffs on the following grounds:

‘It is proved by the summary decree that Shakir, and the other defendants, are proprietors of the talook, as well as Abdool Ghafoor and Abdool Shokoor, and they have made no objections.

The plaintiffs did not acknowledge receipt of the rents previous to 1242; and the defendants, when called upon to prove that fact, produced no evidence to it. Defendants’ witnesses say the rents were paid to one Ram Kishen Ray, and to a sircar, name unknown; but no such plea has at any time been urged by the defendants themselves.

Gokool Aumeen, brother of Ram Kishen, and Ram Kunnaie Sing, depose that Ram Kishen left plaintiffs’ service in 1230, and was engaged by Abdool Allee, and died in 1239: how then could the defendants pay their rents to him? A robukaree of the collector of Dacca Jelalpoore, dated 27th September 1825, shews the rents for 1231 were paid by the defendants. Those from 1232 to 1241, amounting to 3054 rupees 14 annas 6 gundas, principal and interest, up to Assar 1243, are due. On the 6 annas 8 gundas share of the plaintiffs, 1221 Sicca rupees 15 annas 8 gundas 2 c. of that sum are due by defendants, which I decree with costs rateably. Interest to be given on 698 Sicca rupees 4 annas, principal due to plaintiffs from date of plaint to realisation.’

The judge, on the 22d December 1840, reversed the above decision, on the evidence of six witnesses, by whom he considered the payment of their rents, by the defendants, to have been proved.

Mr. D. C. Smyth, a Judge of the Court, on the 7th May 1841, admitted a special appeal on the ground that certain receipts on plain paper had been exhibited in the case, though not filed, and returned the case for further investigation, with instructions, that they should be regularly placed on the record, and verified accordingly. The judge again took up the case, on the 23d May 1842, and having taken evidence on three of the receipts in question, dated the 10th Maugh 1236 for Rs. 64 2
 28th Cheyt ditto ditto 110 7
 19th Sraon 1239 ditto 174 9

Total... 349 2

deducted that amount, and declaring the balance 1396 Sicca rupees 8 annas, due on account of the years 1232, 1233, 1234, 1235, 1237, 1238, 1240 and 1241, he rejected other three receipts put in by the defendants, which were not substantiated. Of the last mentioned sum, he awarded principal 558 Sicca rupees 9 annas 12

gundas falling to plaintiffs' share, with 385 Sicca rupees 6 annas 6 gundas interest due thereon from 1233 to 1242, and also 124 rupees 7 annas costs in the principal sudder ameen's court, to the plaintiffs, and interest on the above 558 Sicca rupees 9 annas 12 gundas amount principal from date of institution of suit to date; and interest on amount of decree to date of realisation.

A special appeal was then admitted by Messrs. Tucker and Reid, on the ground that receipts for the years 1236 and 1239, having been admitted by the Judge, whether or no that fact did not bar all antecedent claims.

BY THE COURT.

On examination of the three receipts admitted, the Court find that they bear no signature, but are simply marked "Siree Sahee." They are only attested by a single witness Ameer Zuman, a relative of, and also sharer with the defendants in the talook. The fact that Ram Kishen left plaintiffs' service in 1230 is clearly proved also. Under the above circumstances, the Court reverse the decision of the judge, and, upholding the judgment of the principal sudder ameen, dated the 12th July 1838, dismiss the appeal with costs.

THE 5TH APRIL 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 123 OF 1844.

Regular Appeal from a decision of the Principal Sudder Ameen of Patna, Abdool Wahid Khan, passed February 12th, 1842.

MIRZA SHABAN BEG, AND OTHERS, APPELLANTS,

(PLAINTIFFS,)

versus

GOVERNMENT, SUBHAN ALI, AND OTHERS, RESPONDENTS,

(DEFENDANTS.)

THIS suit was instituted by appellants, on the 23d February 1841, to cancel the sale of mouzah Khodye-Sohjungee, pergunna Tillareh, and to obtain possession of a twelve annas, twelve and a half dams' share of the same, with mesne profits for 1246 and 1247 Fuslee.

It was urged by appellants, that the sale-purchase was illegal, having been made under another name than that of the real purchaser; that the sale was illegal, having been postponed, without the issue of the prescribed notice, to a date beyond that originally fixed by the collector; and that the arrears claimed were not liable to be thus realized, being already in the hands of the collector, by a deposit of the surplus-proceeds of a former sale.

The first and last of these objections were disproved; and as regards the second, it was not cognizable by the courts, under sections 24 and 25, Regulation XI. 1822; not having been made to the superior revenue authority of the division, within the period prescribed for an appeal to that authority against the proceedings of the collector in regard to the disposal of lands by sale.

The suit was consequently dismissed by the principal sudder ameen; and, on the same grounds, the decision is now affirmed by this Court, in appeal, with costs payable by appellants.

The delay attending the disposal of this case, arose from an appeal having been immediately admitted and tried by the zillah judge; who, on the 6th May 1843, passed a judgment in accordance with that of the lower court. This, the amount of claim exceeding 5000 rupees, was, by section 4, Act XXV. of 1837, beyond his competency: so, the decision being annulled as illegal, a regular appeal was admitted to the Sudder Court; and disposed of, as above shewn, on this date.

THE 7TH APRIL 1845.

PRESENT:

A. D I C K,
JUDGE.

CASE No. 296 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Zillah Midnapore.*

NYAN DAS, APPELLANT,

versus

MOOST. MOHEENEE, WIDOW, RESPONDENT.

THE respondent sued the appellant, in formâ pauperis, for the recovery of the sum of 5605 rupees 12 annas principal, and the same amount of interest, laying her suit at 11,211 rupees 8 annas

0 pie. She stated that her husband, accused of robbery, evaded process in 1227 Umlee, and his property was attached. He then gave himself up, and was in jail until Kartik 1227. When he gave himself up his property was released; and the appellant, pretending to be his agent, received it, giving duly a receipt for it to the police mohurrir, and thenceforth made away with it. When her husband got out of jail, he petitioned the appeal court of Calcutta, to be allowed to sue as a pauper; but, by the opposition of appellant, and others, his prayer was rejected, and while preparing to sue as customary, he died. The respondent made another attempt to sue as a pauper but failed. At length her prayer was granted by the zillah judge, and she instituted this suit.

The appellant admitted the receiving the property attached from the police mohurrir, and duly giving him a receipt for the same; but added, in bar of claim, that he had accounted for the whole of the property to the respondent's husband, whose receipt for the same he filed.

The principal sudder ameen, from the circumstance of the appellant having named only four witnesses to the deed, when he first produced it during the latter preliminary investigation on respondent's petition to be admitted as a pauper, and there now appearing six witnesses to it, and the names of two out of the three he summoned to testify to it, being written at the very bottom of the deed, also from the date of the deed being only one day after the date of a petition filed by the husband, in the court of appeal at Calcutta, though written at a great distance, thence disbelieved the receipt as genuine, and rejected it; and preferring the statement of two witnesses of respondent during the preliminary inquiry, respecting the value of the property in question, being 2000 rupees, decreed accordingly.

The appellant, being dissatisfied, appealed to this Court; and again urged the genuineness of the deed, the receipt.

The respondent did not appear.

The Court, in addition to the reasons recorded by the principal sudder ameen, observe that the stamp on which the receipt is written was greatly of under value; and the proper stamp impressed, after payment of the prescribed penalty, subsequent to the institution of this suit, which tends, still further, to cast suspicion on the deed. After a lapse of years it is difficult to obtain the exact stamp requisite, and then others obtainable must be used for fabrication. Furthermore, the appellant did not produce or make any the least mention of this receipt, when he opposed the prayer of the husband to be admitted as a pauper, which is conclusive of its non-existence at that time.

Appeal dismissed with full costs.

THE 8TH APRIL 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 88 OF 1844.

*Regular Appeal from the decision of Moulvie Looft Hossein,
Principal Sudder Ameen of Jessore.*

MOOSUMAT RADEEKA CHOWDRAIN, APPELLANT,

versus

AMEERCHUNDER BABOO AND RAMCHUNDER BABOO,

RESPONDENTS.

THE respondents brought a suit in the zillah court of Jessore, on the 20th February 1843, against the appellant, Tarapershad Rai, her husband, and Doorgapershad Rai, the brother of Tarapershad, to recover the possession of a four annas share, of the zemeendaree, Hoglea and others. They claimed this, as the heirs of their maternal grand father, Heeraram Rai: the property having been fraudulently appropriated by Gunganarain, the father of Doorgapershad and Tarapershad.

On the 27th November 1843, the principal sudder ameen decreed, ex-parte, in favor of the plaintiffs, with costs.

The appellant stated, in this Court, that the notices requiring her attendance, as a defendant, had been served at Chuckerbair, instead of at Khoord, pergunnah Mooragacha, her usual place of residence; and that even the return of the notice, alleged to have been served at Chuckerbair, was false. She farther stated, that her husband's brother, Doorgapershad, was at the bottom of this case, he having, although a defendant, purchased, in the names of his wives, the disputed property, from the plaintiffs, only a few months previously to the institution of the suit. She begged accordingly that the case might be remanded, to be tried on its merits.

The only point for consideration in this case, is, whether, under the construction of the law, with respect to ex-parte decisions, as laid down in this Court's circular, dated the 12th March 1841, it should be sent back, to be tried on its merits, or not? Under all the circumstances, I am of opinion, that it should. It would appear, that the two brothers, Doorgapershad and Tarapershad, are on

very bad terms; and with reference to the purchase, by Doorgaper-shad, of the property under dispute, in the names of his wives, a fact, which seems to be true, for the respondents don't deny it, there is strong suspicion of collusion, and consequently of doubt, as to whether the notice was duly served on the other defendants. Besides, there is a total want of specification of dates, in the plaint, on which account, it is impossible to say, whether the suit may not be barred altogether, under the rule of limitation. Accordingly, I remand the case, that it may be re-admitted on the principal sudder ameen's file, and decided on its merits, after the usual pleadings and proofs are filed by both parties. The price of the stamped paper, on which the appeal has been drawn up, will be returned to the appellants.

THE 9TH APRIL 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE NO. 182 OF 1842.

Special Appeal from the decision of the Judge of Zillah Midnapore.

ROOP CHURN DAS, PAUPER, (PLAINTIFF) APPELLANT,

versus

HIURPURSHAUD PAUL, AND OTHERS, (DEFENDANTS)

RESPONDENTS.

THIS suit was first instituted by one Oochup Das, pauper, who dying soon after, Roop Churn Das was admitted in his stead, being his uncle and heir.

The claim is for possession, on certain portions in the mouzas Amurdah and Chuk Sultaun, and in Beemul Tutteea talook. The plaint sets forth, that the father of Oochup was ousted from his shares of Amurdah and Chuk Sultaun; and his widow, through

the agency of one Narain Paul, father of Hurpurshaud Paul, defendant, sued and got a decree against Doorga Churn, and the other defendants, for possession and mesne profits. That Doorga Churn, &c. in lieu of the amount of mesne profits, sold her the share of 1 anna of Beemul Tutteea. That Narain Paul continued her agent, and managed her affairs, and paid her the profits derived from the estate until 1230, when he ousted her.

Hurpurshaud, defendant, answered, that Moost. Parbuttee sold to his father one half of her husband's share on Amurdah and Chuk Sultaun, to enable her to prosecute her suit for the whole. That after her death, Oochup sold the remaining half to his father, Narain Paul. In neither answer, nor rejoinder did defendant, Hurpurshaud, mention aught of the claim on Beemul Tutteea. Afterwards, on a separate petition, he asserted that his father had purchased the one anna share of Beemul Tutteea himself, which he had omitted to state in his answer inadvertently.

The case was first tried by the principal sudder ameen, Moolvee Abdoosumud, who deeming the deeds filed by defendant, Hurpurshaud, forged, decreed the whole claim. On appeal to the judge, the case was returned for re-trial; the deed for Beemul Tutteea not having been sufficiently investigated. The case was then re-tried by Kumbur Alee, acting principal sudder ameen, and again the whole claim decreed. On appeal, the decision of the principal sudder ameen was confirmed regarding right and possession on Amurdah and Chuk Sultaun, and reversed regarding Beemul Tutteea: and mesne profits decreed on the former only from the 22d Asarh 1235, the date after the decease of the mother Moost. Parbuttee, whom the judge considered to have been in possession during her life.

The appellant preferred this special appeal, which was admitted to try the power of Moost. Parbuttee to sell any portion of the property, during the minority of her son.

The respondent, Hurpurshaud, in replying, claimed to have the whole of the judgments of the lower courts against him reversed and argued accordingly.

The points of this case are these—1st. Did Narain Paul, the father of the respondents, acquire the 3 annas 4 gundas share of talookh Amurdah, &c., by two successive purchases, from Parbuttee, and her son? 2nd. Could such a sale by Parbuttee, be legal, under any circumstances? 3rd. Is the acquisition by Parbuttee, of the share of Beemul Tutteea, in the manner described in the appellant's pleadings, established? With respect to the first point, we disbelieve altogether, the alleged sales by Parbuttee and her son. In the first place the execution of the deed of sale, by Parbuttee, is not properly proved by witnesses. In the second place, it is highly improbable, that the former who had made such

strenuous exertions to recover by law, a property of which her husband had been dispossessed, should immediately after she had obtained that object, have conveyed away a part of that property to the injury of her son's rights. In the third place, if she had sold a part of it, as described, she would have taken care to secure the payment of the price, at the time of sale, whereas the alleged receipt for the payment, is dated a year after the execution of the deed of sale. In the fourth place, the following circumstance shews, that the allegation of the sales, is false from beginning to end. It is alleged, that Parbuttee sold first the half of her share, and afterwards let the remainder to Narain Paul on lease, and that on her death in 1235, her son Oochub Das, sold to Narain Paul this remaining share which had been leased by his mother. When the estate was afterwards sold for arrears, Narain Paul (who was charged with having bought it himself in the name of his servant) gave his evidence, stating that Oochub Das had never succeeded to a share, and that he had bought the whole from Parbuttee. In his evidence, too, he is entirely silent about the lease. With respect to the second point, such a sale by Parbuttee, even if it had taken place, would be illegal. With respect to the 3d point, although the proof adduced by the appellant, is not so satisfactory as could be desired, we think, under all the circumstances of the case, that it is sufficient. It is pleaded on the part of the appellant, that Narain Paul was the attorney of Parbuttee, and thus possessed himself of her title deeds, and amongst them, the deed of sale to her, of Beemul Tuttea, by Doorgachurn Mihtee and others. This fact is denied by the opposite party; but we believe it to be true. Several witnesses speak to it. Oochub Das, when the sale for arrears, took place, presented two petitions to the collector, in each of which this fact is stated, and on the stamped paper filed by Parbuttee, to obtain a copy of the original decree, by which she recovered possession of her share of talookch Amurdah, the attorney's name is Narain Paul. Taking these circumstances in connection with the fact, that Doorgachurn, &c., the alleged sellers of Beemul Tuttea to Parbuttee, acknowledged the sale to her of that property, as a set off for mesne profits, in the case she had gained against them, and also with the fact, that the respondent has entirely failed to establish his allegation, that Beemul Tuttea was sold to his father by the said Doorgachurn and others, we cannot but think, that with respect to this property, as well as with respect to the other, the acquisition by Narain Paul, was founded in fraud.

As the right of Roopchurn to represent Oochub Das deceased, has been upheld by the courts below, and as no other heir comes forward to dispute his title, we see no reason to interfere with this matter.

We accordingly confirm the decision of the judge with respect to Amurdah and Chuk Sultaun, and the mesne profits thereon: but reverse his judgment regarding the right to Beemul Tutteen, which we decree to appellant with mesne profit from the 22d Asarh 1235, the date of the decease of Moosumat Parbuttee, with full costs.

THE 10TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 11 OF 1844.

*Special Appeal from the Principal Sudder Ameen of the
24-Pergunnahs.*

PEAREE LAL MUNDUL, (PLAINTIFF,) APPELLANT,

versus

RAY OMA KAUNTII SEIN, DEPUTY COLLECTOR OF 24-PER-
GUNNAHS, ONE OF THE DEFENDANTS—OTHERS ABSENT,
(DEFENDANT,) RESPONDENT.

A SPECIAL appeal was, on the 18th July 1843, admitted by Messrs. Tucker and Reid, to try whether an uncovenanted deputy collector has authority to resume rent-free lands, in a malgozarree estate purchased by the Government, at a public sale for balances of revenue.

The case came on for hearing on the 25th June last, and was again resumed this day. As the Government pleader has filed copy of correspondence between the Sudder Board of Revenue and the Government, with instructions to confess judgment, the Court deem it unnecessary to go further into the case. They reverse the decision of the lower court with costs chargeable to the respondent.

THE 14TH APRIL 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 259 OF 1843.

*Regular Appeal from a decree passed by the Principal Sudder
Ameen of Bhagulpore, September 12th 1843.*

MOHUN RAM CHOWDHREE, (DECEASED,) BHUTOO SAHOO, (DECEASED,) BUNDEE PURSIAD, GUARDIAN OF THE MINOR BROTHERS OF MOHUN RAM, APPELLANTS, (DEFENDANTS,)

versus

TILUK CHUND SAHOO, SON AND HEIR OF FAQEER CHUND SAHOO, DECEASED, MUSST. BUNDELOO SAHOO, WIDOW OF FUQEER CHUND SAHOO, RESPONDENTS, (PLAINTIFFS).

THIS suit was instituted by respondents, on the 21st December 1842, to recover, by sale of certain lands, the sum of Company's rupees sixteen thousand three hundred and fifty-four, ten annas, and four pie (16,354-10-4 Co.'s rs.) due under a decree in favor of Tiluk Chund Sahoo, execution of which was stayed by the claims of appellants to the property.

Bechoo Ram, grandfather of Mohun Ram, appellant, had sold, conditionally, half the talooq of Poee, to Musst. Bundeloo, respondent, by a bybilwafa, bearing date the 14th December 1830. The debt involved in this transaction not being satisfied, a suit was instituted for the lands pledged under the deed just mentioned; in the investigation of which suit it transpired, that, of the sum stated to have been advanced in that deed, 8,750 rupees, 2,600 had not

been paid; in consequence of which the claim to the lands was dismissed, and Musst. Bundeloo directed to sue for the sum (6,150 rupees) actually lent by her. She sued accordingly, and obtained a decree, amounting with interest to rupees 12,019-14-6, against Bechoo Ram. An appeal being preferred to the Sudder Court, a doubt arose as to the competency of Musst. Bundeloo to sue Bechoo Ram; a revisal of the case was directed; and the result was, that Musst. Bundeloo was nonsuited, and her son Tiluk Chund Sahoo directed to sue. He did so; got a decree, eventually affirmed by the Sudder Court; and gave in a list of property which he prayed might be attached and sold in satisfaction of it. In this list, was the talooq of Poeë; against the appropriation of which, to the satisfaction of this decree, protests were entered by the appellants Mohun Ram and Bhutoo Sahoo: the former claiming half the talooq, in virtue of a hibehtnameh, or deed of gift, executed by Bechoo Ram in favor of his son Kalee Purshad, his (Mohun Ram's) father; the latter urging his right to the remaining moiety, by purchase from Bechoo Ram. These claims were admitted; and the sale of the talooq to satisfy the decree of Tiluk Chund Sahoo, was disallowed.

Against the admission of these claims as constituting a bar to the just execution of his decree, Tiluk Chund instituted the present action; and, on the 12th December 1843, the principal sudder ameen recorded his opinion, that the transactions exhibited by Mohun Ram and Bhutoo Sahoo, were fraudulent; and, with reference to the lien created by the just claims of the respondent Tiluk under the engagement entered into by his mother, Musst. Bundeloo, with Bechoo Ram, illegal. He passed a decree accordingly against the appellants, who have now brought the suit before this Court, with a view to the reversal of that judgment.

The Court find, that this case involves no less than three distinct claims against three distinct parties: viz., to cancel the deed of gift asserted to have been executed in favor of Kaleepurshad, father of the appellant, Mohun Ram; to set aside the sale, in virtue of which the appellant Bhutoo claims a moiety of the talooq; and to annul a putnee lease of Kaleepurshad's half, held by one Sookh Lal, under engagements which, except incidentally in the matter now before the Court, do not appear to have been questioned or enquired into. With reference to this fact, the Court have no power to dispose of the question at issue in favor of either of the parties before it; but are compelled to record a nonsuit, with costs, against the respondents. They order accordingly.

THE 14TH APRIL 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 45 OF 1844.

Regular Appeal from the Principal Sudder Ameen of Patna.

GIRWUR SING, (PLAINTIFF,) APPELLANT,

versus

PERTAUB NURAIN, AND OTHERS, (DEFENDANTS,)

RESPONDENTS.

THIS case was instituted, on the 27th March 1838, by the plaintiff, claiming to be put in possession of his rights, as mortgagee of certain lands, detailed in the plaint, and also to stay the sale of them. He states that Pertaub Nurain, on the 21st January 1823, or 24th Maugh 1230 Fuslee, borrowed the sum of Sicca rupees 10,000 from him, on mortgage of the disputed property, payable in 11 years. On the expiration of that period, the debt, not having been liquidated, plaintiff, on the 6th February 1836, applied for foreclosure. Notice being issued, defendant, in collusion with Gokool Das, caused the above lands to be included in a list of property to be sold in execution of decree, passed against him in favor of Gokool Das. Plaintiff then protested before the collector. The judge sent the case for investigation to the sudder ameen, by whom plaintiff's protest was rejected on the 8th December 1836. Plaintiff states he has been in possession from the date of the mortgage; and that the order for sale is subversive of his rights, which he sues to enforce, and also to stay the sale.

The defendant did not appear in the lower court.

The principal sudder ameen, on the 14th June 1843, declared the mortgage good for nothing, and altogether inadmissible; because it neither bore the seal of any kaze, nor was it registered. He adds, that the appearance of the document and the discrepancies to be found in the depositions of the witnesses for the plaintiff, lead to the conclusion that he, with Pertaub, the defendant, is acting collusively to avoid the claims of decreedars.

Some of the property now claimed by plaintiff was given in for sale by Gokool, in execution of his decree, more than a year before plaintiff applied for foreclosure of the mortgage; moreover, it is in evidence, that plaintiff's sister is married to Pertaub's son, which is another ground for suspicion of collusion between them. For the above reasons he dismissed the plaint: an appeal was preferred to this Court on the 25th November 1843.

BY THE COURT.

After a careful perusal of the record, the Court concur with the principal sudder ameen in considering the evidence contradictory, and altogether unsatisfactory. Some of the witnesses speak to plaintiff's possession; but, if his statement be true, he has been in occupation of the lands for fifteen years, and might have produced much stronger oral evidence, and also documentary proof to any extent, to establish that fact, which would have been strong collateral proof of the conditional sale. This he has failed to do; and the Court will not be satisfied with secondary evidence, when better might be forthcoming. Under these circumstances, the Court uphold the decree of the lower court, and dismiss the appeal with costs.

THE 14TH APRIL 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 258 OF 1843.

*Regular Appeal from decision of the Principal Sudder Ameen of
Midnapore.*

JUGGERNATH DASS BHOOE, (DEFENDANT,) APPELLANT,

versus

RAJAH JODONATH BHUNJ DEB BAHADOR, (PLAINTIFF,) RESPONDENT.

PLAINTIFF, on the 30th September 1842, or 16th Assin 1250 Umlee, brought this action, in the civil court at Midnapore, against the defendant, under the following circumstances:

Plaintiff states pergunnah Nya Busawun, an estate in the Jungle Mehals, divided into three hoodahs, of which Gcelakata is one, was held by his ancestors. In 1207 Umlee, it was given in farm to

Ranee Soomitra Bhunj; and, in 1208, the settlement having been made with her, she, on the 2d of Maugh of that year, gave in her kaboolcut to the collector. Soomitra and her son, Rajah Tirbikrom, plaintiff's father, held the entire pergunnah, as did plaintiff, who succeeded, on his father's death in 1235 Umlee. Rajah Tirbikrom appointed Juggernath Dass Bhooea, a sirdar of 17 paieks. Oorjun, Juggernath's father, paid Rajah Damooder Bhunj, plaintiff's grandfather, 300 rupees, as peishkus of Geelakata. Juggernath also paid regularly to the naib of Nya Busawun, the sum of 415 rupees. He afterwards had a seal made, styling himself *zemindar*; called Geelakata a pergunnah, not a hoodah; presented petitions to the courts under the title of *zemindar*; and had purwanchs addressed to himself under that title. Plaintiff, in 1238, sued Juggernath Dass summarily for balances; and the collector, on the 15th Bysack 1239, gave him a decree against defendant for 271 rupees, the amount jumma, which the latter acknowledged to be due. In the same year plaintiff states, he dismissed Juggernath and took hoodah Geelakata into his own hands, and held it till the close of 1244; when, in consequence of disputes with the defendant, application was made to the magistrate, who fined some of plaintiff's people; and the defendant, under cover of the magistrate's order, ousted plaintiff of 116 villages. Plaintiff adds, that the commissioner considered the defendant merely a dependant, not a *zemindar*; and concludes by estimating the value of the lands, of which he is dispossessed, at 3000 rupees, and their net proceeds at 913 rupees 12 annas, which he claims from 1245 to 1249 Umlee, being 4568 rupees 12 annas with interest 1644 rupees 12 annas, making a total of 9213 rupees 8 annas; the amount of this action.

The defendant pleads, that some of the lands referred to by plaintiff has been resumed by Government, under Regulation II. of 1819. He objects to the amount at which the proceeds are fixed. He claims pergunnah Geelakata as an hereditary shikamee or dependant estate, for which a peshkus of 271 rupees has all along been paid to plaintiff's ancestors. Produces a hookumnameh, order, addressed to his grandfather, Pertab Dass, dated 11th Sraon 1173 Umlee; and an order for release of crops dated 1189 Umlee, signed by Rajah Dumooder Bhunj. States his father, Oorjun Dass, died in 1199 before his, defendant's, birth; and that Nursing Baboo, his uncle, was manager on his part. That on the murder of a Government officer by the Chooars, his uncle and his mother ran off into the Mahratta territories; and consequently, when the Government made a settlement with Rane Soomitra for pergunnah Nya Busawun (in which the disputed property is situated) as *one* pergunnah, there was no one on his part to represent his subordinate rights and the tenure was not alluded to in the settlement papers. Notwithstanding this however in the accounts of Nus-

seerollah tehsildar, for the years 1206, 1211 and 1232, mention is made of his peishkus jumma. That in the year 1211 Umlee, or 1803 A. D., Mr. Earnst sent him a perwaneh, being then in possession of the property; that he has all along paid 271 rupees jumma; that neither Rancee Soomitra, plaintiff's father, nor plaintiff himself, objected to his possession up to 1237; that in his receipts for rents paid he was styled "zemindar;" these however he is unable to produce, as they were carried off when his cutcherry was attacked by plaintiff's people in 1245; that plaintiff was willing to receive rent at 271 rupees up to 1249; but would not style him "zemindar," in consequence of which, he withheld payment of his rents, and that he has never been dispossessed of the lands or dismissed from service, as alleged by plaintiff.

The principal sudder ameen, on the 24th August 1843, decreed for the plaintiff on the following grounds:

He was of opinion that the defendant did not shew under what title he held the shikamee (dependent) zemindaree at 271 rupees jumma: he doubts the genuineness of the documents, dated the 11th Srabon 1173 Umlee, and the 21st Chyete 1189 Umlee, which wear the appearance of having been written on old paper, over the folds of which the letters have been traced. Of the document bearing 1189 Umlee, he says, it appears to have been written on paper cut off from the top of some other document, bearing the rajah's seal, where a blank space is always left. He comes to this conclusion from the general appearance of the document, and from the manner in which its contents are compressed into the small piece of paper of dimensions scarcely sufficient to admit of them; and observes that a piece of plain paper of sufficient size was easily procurable for its preparation.

As regards the document dated the 11th Srabon 1173, he remarks that it is a most suspicious circumstance, it was not filed, or even alluded to, in the summary suit decided in 1239 Umlee, though that of 1189 was put in.

He then states that from 1200 to 1206 Oorjun, defendant's father, and also Rajah Dumooder Bhunj absconded, and the pergunnah was in the hands of the Government, who in 1208 made a settlement with Rancee Soomitra for it, and the disputed land included in it; after which period it is not shewn under what title defendant claims his shikamee (subordinate) zemindaree. That Guelakata is not a pergunnah but a village, and that the papers of the time of Nusseerollah, dated 28th Aghon 1206, who was tehsildar on the part of Government, shew Oorjun, defendant's father was a "sirdar" under plaintiff's ancestors, which is also established by a letter from the collector to the commissioner, dated 16th April 1832.

An appeal having been preferred by the defendant, the case was heard on the 11th March, the 8th instant, and again this day.

BY THE COURT.

The defendant admits the lands in dispute are included in pergunnah Nya Busawun, for which the Government made a settlement with Ranee Soomitra; but pleads an under tenure styled a shikamee zemindaree at 271 rupees jumma; the only point, therefore, for the Court to determine is, whether this special plea is established by the defendant, the present appellant.

The Court observe, that the two documents of 1173 and 1189 put in by the defendant, are by no means satisfactory, and are open to all the objections recorded by the principal sudder ameen; that defendant no where states when, and from whom, the shikamee tenure which he claims of right, was acquired; that its acknowledgment by the plaintiff or his ancestors is not proved; that its existence, previous or subsequent to the settlement of pergunnah Nya Busawun by Government, with Ranee Soomitra, under grant from plaintiff or his ancestors, is not shewn; and that the documentary proof relied on, in defendant's answer, has not been produced. Under these circumstances, they dismiss the appeal with costs; and direct an account of mesne profits be taken in execution of this decree.

THE 14TH APRIL 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 72 OF 1844.

*Special Appeal from the decision of Hurreenurain Ghose, late
Principal Sudder Ameen of the 24-Pergunnahs.*

RAMCHUNDER RAI CHOWDRY, APPELLANT,

versus

RAMCHAND·RAI CHOWDRY, AND OTHERS, RESPONDENTS.

THE following are the facts of this case:

The appellant sued Birmoomai Dibhya, in the court of the 24-Pergunnahs, on the 31st May 1836, to recover a debt due to him, by her, and which was originally secured by the conditional

sale to him, of a village called Sakaree Pota. He was compelled to sue for the money, as the estate, in which the village lay, was sold for arrears of revenue, before he could obtain possession of the unredeemed mortgage. The appellant farther stated, that the loan was originally contracted by Birmoomai, to pay certain debts due by her father-in-law, Munohur Rai, to whom the village, conditionally sold, belonged. In the above case, Birmoomai denied the loan and the sale, altogether. Neemchand Mookerjee, the father and guardian of Prushunnai, the widow of Birmoomai's adopted son, Mudhoosoodun, opposed the plaintiff's claim to any right in the village Sakaree Pota, that village being the property of her deceased husband,—Birmoomai having no power to dispose of it. The sudder ameen, Chunderseekur Chowdry, on the 3d February 1837, decreed as follows. It was not proved, for the reasons enumerated, that Birmoomai had borrowed the money, in order to pay her father-in-law's debts, but it was proved that she had executed the deed of conditional sale, and had borrowed the money. A decree, therefore, was passed against her, for the money. With respect to the objection urged by Neemchand Mookerjee, it was not necessary to pass any order upon it, inasmuch as the present suit was not instituted to obtain possession of the land itself. The claim of right by Neemchand to the surplus proceeds of sale, now in deposit in the collector's office, and under attachment, would be disposed of in the course of the execution of the decree. In consequence of this decree, the appellant applied for the attachment and sale of certain parcels of land which he stated to belong to Birmoomai. His application, however, was refused, on a summary inquiry, because apparently, the lands in question, belonged to Ramchandrai Chowdry, who purchased them from Mudhoosoodun deceased, the adopted son of Birmoomai. To set aside this order, and to effect the sale of the said lands, the present suit was instituted, in the court of the 24-Pergunnahs, on the 29th July 1842.

The answers filed were to this effect: that Sakaree Pota did not belong to Birmoomai, but to Munohur Rai, and that Birmoomai had not borrowed money to pay his debts: that the property under dispute, as well as Sakaree Pota, belonged to Mudhoosoodun, who had acquired it by inheritance from Munohur, and had afterwards sold it to Ramchand Rai, who was in possession of it.

On the 24th February 1843, the sudder ameen, Rai Lokenath Bose, dismissed the suit, with costs, because, with reference, both to the decision of Chunderseekur Chowdry, dated the 3d February 1837, and to farther evidence taken in the present case, it was not proved, that Birmoomai had sold conditionally, the village Sakaree Pota, in order to raise money, to pay her father-in-law's debts. This being the case, the property under dispute, and which was

Munohur Rai's, could not be legally sold. Farther, as it could not be sold, for a debt decreed, solely against Birmoomai, it was unnecessary to enquire, whether the sale to Chand Rai was, or was not, collusive.

This decree was confirmed by Hurreenurain Ghose, on the 18th of July 1843.

This case was admitted to a special appeal by Mr. Tucker, on the 6th February 1844, because, "instead of inquiring into the liability of the lands to sale in execution of the decree obtained by the petitioner against Birmoomai, the lower courts re-opened the original transaction, already disposed of in the first decree, and decided in opposition to that decree, which he (Mr. Tucker) considered to be illegal."

According to the statement of the case, which I have endeavoured to give, fully, and clearly, the facts are not, as they are assumed to be, by Mr. Tucker. It was admitted by both parties, throughout, that the lands, to effect the sale of which, the suit was instituted, belonged to Munohur Rai, the father-in-law of Birmoomai. This being the case, there were two points for consideration, 1st, whether Birmoomai contracted the debt, on account of which a decree had been passed against her, in order to pay Munohur's lawful debts? 2ndly, whether, supposing it were proved, that the loan was expended on Munohur's account, the property which formed the subject of dispute, had been sold by Munohur's heir to Chand Rai, before it was attached by Ramchunder Rai, the decree-holder? With respect to the first point, the lower courts decided in the negative, both with reference to Chunderseekur's decree, which was final, as not having been appealed from, and to additional evidence, taken in the case. With respect to the second point, it was obviously unnecessary to go into it, the decision on the first point, depriving the decree-holder of the power to sell. It will be seen from these remarks, that the lower courts did not decide contrary to the first decree. Whether they have arrived at the truth, with respect to the facts, it is not for me to say, under Act III. of 1843, on the subject of special appeals, and I accordingly, reject the appeal, with costs, confirming the decrees of the lower courts.

THE 14TH APRIL 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 73 OF 1844.

*Special Appeal from the decision of Hurreenarain Ghose, late
Principal Sudder Ameen of the 24-Pergunnahs.*

RAMCHUNDER RAI, APPELLANT,

versus

PRISHUNMAI DIBBYA, RESPONDENT.

THE facts of this case, are the same as those stated in the case, No. 72 of 1844, of this Court, decided to-day, with this difference, that the respondent instituted this suit, to set aside a summary order, in execution of a decree, by which, the appellant, as decree-holder, against Birmoomai, was to receive, the surplus proceeds of the sale, of the talookah, in which the village Sakaree Pota lay, and which proceeds of sale were in deposit, in the collector's office, and under attachment.

On the 24th February 1843, Rai Lokenath Bose decreed for the plaintiff, with costs, with reference to the grounds set forth by him, in his decision in the case, No. 72 of 1844.

The principal sudder ameen confirmed the above decree, adding, that Chunderseekur had, in a miscellaneous proceeding, held in execution of his decree of the 3d February 1837, contradicted the opinion he had expressed in that decree, with respect to the mode in which Birmoomai had spent the loan, and though that decree was final, had assumed the correctness of the facts laid down by him in a subsequent summary proceeding, and on the strength of this assumption, had got a legal opinion on the point, from the Hindoo law officer of this Court.

A special appeal was admitted in this case, by Mr. Tucker, on the 6th February 1844, because he considered it to be illegal, that the lower courts should have passed a decree, without taking a fresh opinion, to set aside the one already given.

If the facts stated in the other case, be attended to, it will appear, that the great point for consideration in this case, as well as in the other, was, whether Birmoomai had expended the loan contracted

by her, in paying Munohur's debts? Except this could be proved, the defendant Ramchunder, had obviously no right to any portion of the proceeds of sale, as the village Sakaree Pota, was not Birmoomai's own property.

The lower courts decided the above point in the negative. It is true, that Chunderseekur in a summary proceeding, decided this point in the affirmative, contrary to his own previous decision, which was final, but the judges *of the fact*, in the present case, were Rai Lokenath Bose, and Hurreenurain Ghose, not Chunderseekur, and it surely was not necessary for them to pay any attention to the opinion of the law officer of this Court, when that opinion was founded, on what they decided to be contrary to fact. Under these circumstances, I consider that I am barred by Act III. of 1843, from interfering with the decisions of the lower courts, and I reject the appeal, with costs.

THE 15TH APRIL 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 127 OF 1844.

*Regular Appeal from a decree passed by Hedayut Ali Khan,
Principal Sudder Ameen of Behar, January 12th, 1844.*

MUSST. MOTEE RANEE KONWUR, APPELLANT,
(DEFENDANT,)

versus

MUNGUR SAHOO AND KHUROODHUR SAHOO,
RESPONDENTS, (PLAINTIFFS.)

THIS suit was instituted by respondents on the 4th April 1843, to obtain the sale of certain lands, in satisfaction of a decree held by them against Rundheer Singh and Nomur Singh, sons of Jye Kurn Singh, brother of Soobrun Singh, the husband of appellant; they, the said Rundheer Singh and Nomur Singh, having, fraudulently, under three cowalehs, or deeds of sale, bearing date the 22d Magh 1247 F., transferred their rights and interests in the said lands to their aunt the appellant, thus preventing the disposal of those lands for the benefit of respondents, as above stated.

It was established in the lower court, that the pretended sale of the lands to appellant by Rundheer Singh and Nomur Singh, in conjunction with their younger brothers Ajudheo and Kashinath (whose shares were included in the cowaleh,) was with intent to evade execution of the decree held by respondents; and that, up to the present time, the nephews of appellant were in possession, as proprietors, of the different villages constituting the estate. The principal sudder ameen accordingly decreed in favor of respondents, to the extent of the rights and interests of Rundheer Singh and Nomur Singh, which were declared liable to sale under the decree held by respondents against those two individuals.

On the ground on which it was passed, the Court affirm the judgment appealed against; with costs payable by appellant. The whole transaction is evidently stamp'd with fraud and conspiracy, on the part of every member of appellant's family whose name appears on the proceedings.

THE 19TH APRIL 1845.

PRESENT:

J. F. M. REID,

JUDGE.

CASE No. 77 OF 1845.

*A Special Appeal from the decision of the Principal Sudder Ameen
of East Burdwan.*

TARA CHAND BHUTTACHARJE, (PLAINTIFF.)

APPELLANT,

versus

RAMJYE DUTT, AND OTHERS, (DEFENDANTS,) RESPONDENTS.

THE plaintiff sued the defendants, in the zillah court of East Burdwan, on the 9th November 1842, to obtain possession of 137 beegahs of malgoozaree land, and recover the value of the crops thereof, laying his suit at Company's rupees 794-5-0. The sudder ameen, on the 13th December 1843, passed a decision, decreeing possession of the land and a portion of the crops claimed, to the plaintiff. Ramjye Dutt appealing from this decision, it was reversed by the principal sudder ameen, on the 16th May 1844. The plaintiff, dissatisfied with this decision, applied to this Court, on the 2d August 1844, for a special appeal.

On the 10th September 1844, the plaintiff filed a razeenamah, and the defendant, Ramjye Dutt, a soolchnameh, by which it was agreed that the plaintiff should pay to Ramjye Dutt the sum of 75 rupees, and that the land decreed by the sudder ameen should be given up to the plaintiff, and that each party should pay his own costs.

The case was taken up this day in consequence of a petition of the plaintiff, and one Chundee Churn Rai put in a petition, claiming the contested land under a purchase from Ramjye Dutt, alleging that the compromise was collusive in order to defraud him, and praying that the petition for a special appeal might be refused.

Under these circumstances it is merely necessary to provide for the parties regularly before the Court, as the decision will merely affect them, viz., the plaintiff and defendant. It cannot affect Chundee Churn Rai, who is not a party to the suit, and must therefore be left to seek his remedy by a regular suit. It is accordingly

ORDERED:

That the special appeal be brought regularly on the file; and this having been done, that in conformity with the razeenamah and solehnameh, the decision of the principal sudder ameen be reversed; that of the sudder ameen, as regards possession of the contested lands, affirmed, and as regards the award of a portion of the crops reversed; and that both parties pay their costs in all the courts.

THE 22D APRIL 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 40 OF 1844.

Regular Appeal from that part of the decision of Seyud Junab Allee, late Principal Sudder Ameen of East Burdwan, which related to the award of costs.

BEYRUBCHUNDER SINGH, APPELLANT,

versus

RADHA GOBIND MITTRE, AND OTHERS, RESPONDENTS.

THE facts of this case are shortly these—

The respondents sued Kishore Bullub Mittre, and others, for the recovery of certain lands, and included the appellant in the suit, as being in the nominal possession of an under tenure, of which in fact

Kishore Bullub, and others, were in real possession. Before the case came to a decision, the original plaintiffs and defendants filed a deed of compromise founded on the award of arbitrators, with which award they expressed themselves satisfied. They charged themselves respectively with the costs. In the award of the arbitrators, the appellant is released from liability. He applied to the principal sudder ameen to have his expences paid; but being unsuccessful, appealed to this Court. As the original plaintiffs expressed themselves satisfied with the award of the arbitrators; and as that award exempted the appellant from liability, he ought, undoubtedly, to obtain his expenses from the plaintiffs. Accordingly, the case is sent back, that the principal sudder ameen restoring it to his file, may issue the proper order in behalf of the appellant, who is likewise entitled to have the value of the stamped paper, in which his appeal was drawn up, returned to him.

THE 24TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 64 OF 1841.

Special Appeal from the decision of the Judge of 24-Pergunnahs.

KISHEN PEREAI, KOOSAIEE LUSHKUR, AND BHYROB

LUSHKUR, (DEFENDANTS,) APPELLANTS,

versus

CASSEENATH HOLDAR, SUMBHOO CHUNDER HOL-

DAR, AND BISHENNATH HOLDAR, (PLAINTIFFS,)

RESPONDENTS.

RAM CHAND LUSHKHUR, CLAIMANT.

THIS suit was instituted on the 17th February 1835, or 7th Phalgun 1241. Plaintiffs state, that Musst. Koontee, Musst. Kishen Pereah, and Musst. Manoka, three widows of Soobul Lush-

kur, Ram Hurree Lushkur, and Soonder Lushkur, Besoo Lushkur's three sons, on the 10th Poos 1228, sold to them in the name of Sumbhoo Chunder Holdar for 1175 Sicca rupees 39 beegahs, 16 cottahs of land, partly rent-free and partly paying revenue, situate in the village of Bengala, pergunnah Baleea, originally the property of their father-in-law and their husbands. A deed of sale was drawn out and signed by Koosaiee and his mother, Ruttun Monee, as attesting witnesses, and duly registered. Plaintiffs were put in possession and the defendants gave them a kabooleet for 10 cottahs of land, on which they reside; the remainder they let out to ryots. They paid their revenue to the zemindar up to 1239 and got receipts for the same in name of the former proprietors, the defendants, through Sumbhoo Chunder.

The defendants, it is alleged, took forcible possession of a tank, about 15 cottahs, which plaintiff had let out to one Raj Chunder Bhundaree. Proceedings were set on foot in the foudaree court, and eventually the commissioner, on the 7th September 1832, ordered plaintiffs to sue regularly in the civil court. Under cover of this order, the defendants, on the 30th Assin 1239, ousted plaintiffs of the whole of their purchase. Manoka is dead. Koontee and Kishen Pereah, both childless. They sold the land to pay their husband's debts, and also for their own purposes. Koosaiee Puddun, and Ram Dhun, relatives, witnessed the deed.

Plaintiffs estimate their action at 1239 Sicca rupees 8 annas 9 pie the value of the lands, and apply for mesne profits with interest.

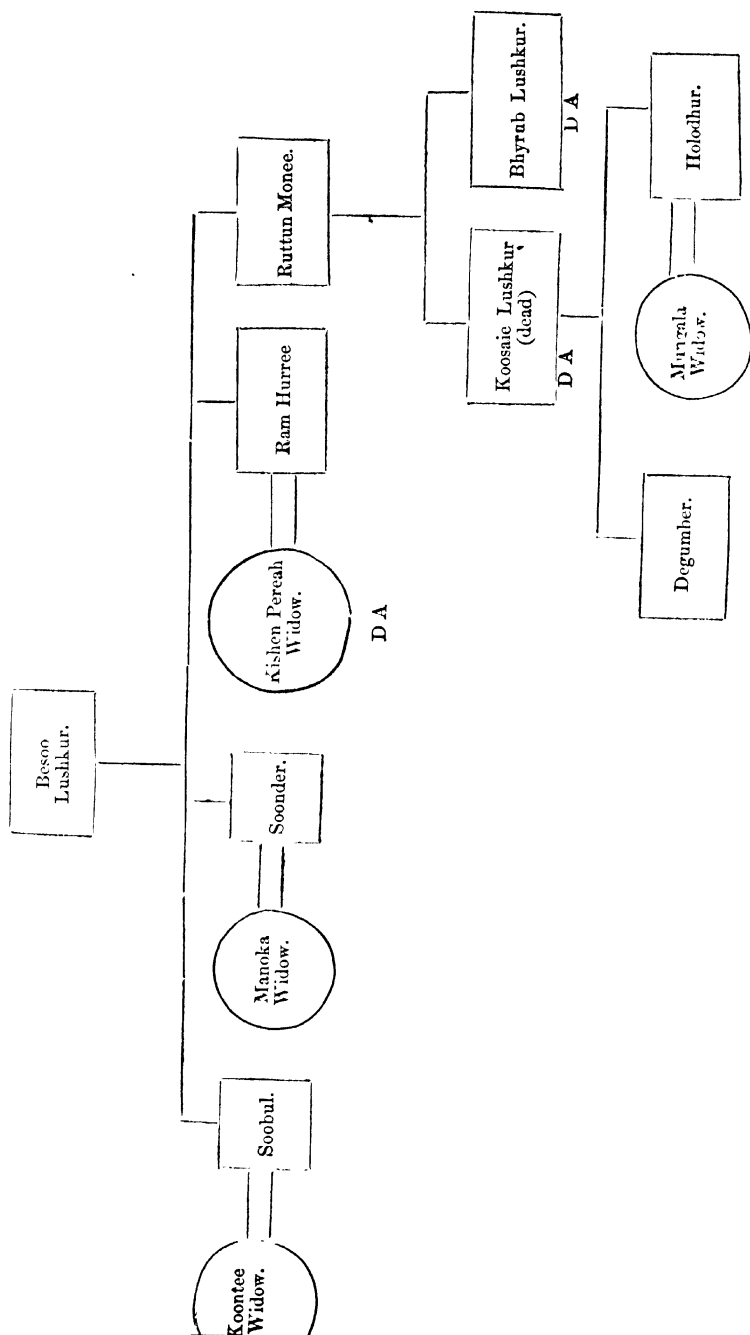
The defendants, Kishen Pereah and Koosaiee, deny the sale. Kishen Pereah states, she gave Sumbhoo Chunder a power of attorney to act in a case in the foudaree court, and that they all three widows gave him a power of attorney to collect their rents; that he borrowed the sum of 901 rupees from them on three bonds, which he admitted in a case No. 2663; that having money there was no necessity to sell their estate; that they have all along held possession, and that plaintiff never had his name registered in the zemindar's serishtah, or sued to get possession, though 13 or 14 years have lapsed.

The defendant, Koosaiee, further urges, that under the shastre, the estate belongs to him and could not be alienated by the widows.

The defendant, Koontee, in the lower court admitted the sale to plaintiffs.

Plaintiffs, in reply, state that the 901 rupees alluded to by defendant, as lent to him, was a part of the 1175 rupees, for which sum he purchased the estate. They offered to lend him the money on interest, he borrowed 901 rupees and repaid it.

The principal sudder ameen, on the 26th September 1836, declared the sale of ancestral property by the widows, while male heirs to Besoo Lushkur were alive, invalid, by Hindoo law. As, however,



the deed being registered was to a certain extent proved, he dismissed the plaint, granting the plaintiff's permission to sue for amount purchase money.

The judge of the 24-Pergunnahs, on the 28th January 1840, recorded his opinion to the following effect.

It appears the widows sold the lands to plaintiffs, who held them for some time. Koosaicee attested the deed, as did Ruttun Monce, the mother of the two minors, Bhyrob and Ram Chand (deceased.) By the exposition of the pundit, attached to the Sudder Dewanny Adawlut, under the Hindoo law, the sale is legal. I decree for the plaintiffs with mesne profits.

An appeal against this decision having been preferred, the case was laid before a full bench on the 17th instant and again this day.

The Court observe, that the deed of sale is entirely opposed to Hindoo law, in as much as even admitting it to be proved, it is established by the plaintiffs' statement that the sale was made by the widows for their own benefit—not for the liquidation of their husbands' debts. They therefore reverse the judge's decision, with costs, against the respondents, and dismiss the plaint.

THE 24TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 141 OF 1844.

Regular Appeal from the Principal Sudder Ameen of Jessore.

ISHOR CHUNDER PODAR, (DEFENDANT,) APPELLANT,

SIRSUTTEE DASSEE, ABSENT IN APPEAL,

versus

AULIM CHUNDER PODAR, (PLAINTIFF,) RESPONDENT.

THE plaint, filed on the 12th September 1843, or 28th Bhadoon 1250, states as follows:

Bulram, plaintiff's father, Ram Kunnaiee, and Ram Soonder, were three brothers, sons of Gour Mohun Podar. Plaintiff's father and one Kalecpersaud purchased turf Selimpore, in the talook

Yusufpore, with joint funds. Plaintiff's father died, leaving him a minor. His uncle Ram Kunnaiee concealed plaintiff's name and his rights as heir to his deceased father, and had his own name registered in lieu, in the collector's books; and, in collusion with Kaleepersaud and Beer Chunder Podar, made sundry transfers of land by sale one to the other. Ram Kunnaiee gave up certain villages in turf Selimpore to Kaleepersaud and Beer Chunder, who in return made over the villages Payerah and Deegolea, in pergunnah Bhatlah to Ram Kunnaiee. They formed of these Selimpore and Bhatlah lands a talook, turf Selimpore, &c., at a sudder jumma 3008 rupees 1 anna 17 gundas 2 cowries, and had it registered in the names of Ram Kunnaiee and Ram Soonder. On plaintiff's attaining his majority, he petitioned the collector; and when the case was disposed of, the guardian of Ram Soonder's two sons, Sumbhoo Chunder Bose, and Ram Kunnaiee, in collusion, procured the appointment of an aumeen, through whom the estate was divided into three equal shares; sudder jumma of each being 1002 rupees 11 annas 5 gundas 3 cowries, and the gross proceeds 2256 rupees 1 anna 9 gundas 3 cowries 2 krants. The Government revenue was accordingly thus paid in.

In 1824 A. D., the guardian of Rajah Burdakaunth Roy sued Beer Chunder, Kaleepersaud, plaintiff, and other sharers, in the Calcutta court of appeal, on an ikrar, and obtained a decree against them all on the 15th September 1827, for possession of pergunnah Bhatlah, which was proved to have been mortgaged only, not sold out and out to the Podars, as alleged by them in their answers. Plaintiff and the others made separate appeals to the Sudder Dewanny Adawlut: the orders of the court of appeal were however affirmed on the 31st August 1835, in consequence of an adjustment between the parties, and consequently plaintiff lost the village Payerah, which had fallen into his share in the division, a putnee of which, however, he got at a jumma of 442 rupees 12 annas 5 gundas 3 cowries from the Rajah, paying for the same. Plaintiff states, he was a minor when the transfer of villages above alluded to was effected between Beer Chunder and Ram Kunnaiee, who threw the villages, pledged by the Rajah, into the shares of plaintiff, and Sursatee, widow of Birjnath, Ram Soonder's son, reserving to himself the villages regarding which there was no dispute.

The villages Payerah and Deegolea had a jumma of 722 rupees 15 annas 0 gunda 2 cowries fixed on them, the proceeds of these villages are 1922 rupees 13 annas 17 gundas 1 cowry. The Rajah has taken possession of them by decree of court. The jumma 722 rupees 15 annas 0 gunda 2 cowries, deducted from 3008 rupees 1 anna 17 gundas 2 cowries, leaves a sudder jumma of 2285 rupees 2 annas 18 gundas still in the joint names of sharers in the collector's books.

I am entitled to $\frac{1}{3}$ d of this jumma 761 rupees 11 annas 12 gundas 0 cowry 2 krants, and profits thereon 856 rupees 11 annas 18 gundas 2 cowries=1618 rupees 7 annas 11 gundas 0 cowry 2 krants. I hold at present certain villages at sudder jumma 559 rupees 15 annas, with their profits 557 rupees 7 annas 12 gundas 1 cowry 2 krants=1117 rupees 6 annas 12 gundas 1 cowry, which being deducted from 1618 rupees 7 annas 11 gundas 0 cowry 2 krants, leaves sudder jumma 201 rupees 12 annas 12 gundas 2 cowries, 2 krants, and profits thereon 299 rupees 4 annas 6 gundas 1 cowry =501 Sicca rupees 0 annas 18 gundas 3 cowries, or 534 Co.'s rupees 4 annas 1 gunda. I sue for possession at three times the sudder jumma of this portion with mesne profits from date of the Rajah's decree 1243 to 1249, being seven years, at 299 rupees 4 annas 6 gundas 1 cowry per annum=2194 rupees 15 annas 12 gundas 2 cowries 2 krants, making a total of 2800 Sicca rupees 7 annas 10 gundas 2 cowries, or Company's rupees 2979 rupees 13 annas 1 gunda 2 cowries. I will subsequently sue for interest on mesne profits.

ANSWER OF SURSUTTEE DIBAIL.

Gour Mohun, Gooroopersaud, Kaleepersaud, and Beer Chunder, bought with joint funds turf Selimpore in names of Bulram and Kaleepersaud and held jointly. Disputes arose amongst them, which they settled, making a division of turf Selimpore, Birmopoor, Sreepore, and pergunnah Bhatlah, amongst themselves. Gour Mohun, on the death of his eldest son, Bulram, entered his share, turf Selimpore and Payerah and Deegolea, in the collector's books in the names of his two other sons, Ram Kunnaice and Ram Soonder, at sudder jumma 3008 rupees 1 anna 17 gundas 2 cowries. He made Ram Kunnaice manager of the estate and Ram Soonder of the personals and of the cash, under written instructions.

Ram Soonder died, leaving two sons, Birjnath deceased, my husband, and Casseenath, both minors.

On Gour Mohun's death, Ram Kunnaice managed both lands and cash, at which time my mother-in-law, Agermonee, and Aulin Chaud, plaintiff, applied to the collector for a division of their shares. Bhyrob Chunder, an aumeen, was appointed, and the talook at a sudder jumma of 3008 rupees 1 anna 17 gundas 2 cowries, was divided into three shares of 1002 rupees 11 annas 5 gundas 3 cowries each. The butwareh was confirmed by the Sudder Board of Revenue, and under it, plaintiff got the first share, my husband and his brother, the second, and Ram Kunnaice, the third.

Rajah Burdakaunth's guardian sued Beer Chunder, plaintiff, and other sharers in 1824, in the Calcutta court of appeal. The case, however, was adjusted between the parties, while in appeal before the Sudder Dewanny Adawlut. Defendant further adds that plaintiff

was 32 years of age when the division took place, and, considering the village Payerah a very valuable property, voluntarily took it into his own share; that he held it for 20 years; that the division of the estate has been upheld by the courts; and that plaintiff cannot after so long a period has elapsed, sue to annul it.

The answer of Ishor Chunder Podar supports the above answer.

Plaintiff, in reply, states the property was not acquired as alleged in the answer by the four persons therein mentioned, but by his father Bulram and Kalepersaud, who were half sharers; and that he was first made acquainted with the collusive division between his sharers when the rajah's suit was instituted in the court of appeal.

The principal sudder ameen, Molovy Mahomed Kuleem, on the 9th March 1844, gave the following judgment:—

It appears that in 1229 turf Selimpore, the sudder jumma of which was 3008 rupees 1 anna 17 gundas 2 cowries, was divided into three equal shares by an aumeen, deputed from the collector's office; the village Payerah at sudder jumma 442 rupees 12 annas 5 gundas 3 cowries fell to plaintiff's share, and Deegolea at sudder jumma 280 rupees 2 annas 14 gundas 3 cowries to that of Ram Soonder Podar. Both these villages have gone into the possession of the Rajah under decree of court, and the amount of their sudder jumma being 722 rupees 15 annas 0 gunda 2 cowries must be deducted from 3008 rupees 1 anna 17 gundas 2 cowries, the originally recorded sudder jumma of turf Selimpore in the collectorate, which leaves a sudder jumma of 2285 rupees 2 annas 17 gundas in the joint names of the three sharers. Defendant's plea that the plaint is beyond the statute of limitations is invalid; he could not bring the action till the Rajah's suit for pergunnah Bhatlah was finally determined in the Sudder Dewanny Adawlut in 1835; from which period to date of plaint, 12 years had not elapsed.

The principal sudder ameen then proceeds to apportion the jumma on the three shares, and decrees possession of lands at sudder jumma 201 rupees 12 annas 12 gundas 2 cowries 2 krants, yielding a profit of 295 rupees 14 annas 19 gundas 1 cowry, with mesne profits from the date of the adjustment of the Rajah's suit in 1835 to date of regained possession, and interest from date of its amount being fixed, with costs, against Ishor Chunder Podar, releasing the other defendants from the claim.

An appeal having been preferred against this decision, the case came on for hearing on the 17th, 19th and 20th of February, and on the 10th instant was made over for consideration by a full bench.

The Court observe the object of this suit is to break up a butwareh, confirmed by the revenue authorities upwards of 20 years ago. Notwithstanding which, the principal sudder ameen gave the

plaintiff a decree to be executed against Ishor Chunder Podar's share alone, thereby taking lands, on which Government revenue had been assessed and giving them to another party; but leaving the jumma as before ;—thus breaking up not only the butwareh, but the permanent settlement, a power which the civil court does not possess. Mr. Barlow would further add, that the lands now sued for having been under the butwareh, by consent of the plaintiff, in adverse possession of the defendants for many years, and their occupancy by them acknowledged and upheld for so long a period, he is of opinion the plaintiff is not now entitled to come into court, and would dismiss the suit under the statute of limitations. Ordered accordingly that the appeal be decreed, and plaintiff's claim dismissed with costs.

THE 26TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 33.

IN the matter of the petition of Degumber Singh, filed in this Court on the 10th February 1844, praying for the admission of a special appeal from the decision of F. Cardew, Esq., judge of Beerbhoom, under date the 11th November 1843, confirming that of Mahomed Saecin, sudder ameen of Beerbhoom, under date the 26th July 1843, in the case of petitioner, plaintiff, *versus* Kalee Pershad Singh and others, defendants.

It is hereby certified that the said case is sent back to the judge for re-trial on the following grounds.

This suit was instituted, on the 28th August 1842, to fix the rent demandable on the defendant's lands. A former suit, instituted by the petitioner's father, for possession of the said lands, was thrown out on the 17th August 1817, with reservation to sue for an

adjustment of the rent. The sudder ameen dismissed the claim on its merits; but on appeal, the judge, without referring to the merits of the case, dismissed it; because a period of 25 years had elapsed since the date of that order.

As there is no limitation against entertaining a suit for an adjustment of rents, that being a perpetually recurring demand and therefore cause of action, we admit the special appeal, and order that the case be returned to the judge, with instructions to decide the appeal from the decision of the sudder ameen on its merits.

THE 26TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 129.

IN the matter of the petition of Rajah Mode Narain, filed in this Court on the 11th March 1844, praying for the admission of a special appeal, from the decision of the additional judge of zillah Behar, under date the 12th December 1843, affirming that of Mahomed Ibrahim, sudder ameen of that district, under date 1st September 1843, in the case of Rajah Mode Narain Sing, plaintiff, *versus* Musst. Mankoonwur and Tekkoonwur, defendants.

It is hereby certified that the said application is granted on the following grounds.

This suit was instituted by the petitioner to recover a balance of rent, alleged to be due from the defendants, and also to cancel a mookurrurree lease, under which they held the lands. The suit was laid at Company's rupees 109-5-9, the amount balance said to be due.

The case was tried, in the first instance, by the sudder ameen, who gave a decree for a portion of the balance claimed; but dismissed the claim, as respected the annulment of the mookurrurree lease, on the ground that a balance of rent was no legal ground for

doing so. An appeal was preferred to the additional judge, who considering that the question of mookurruree ought to be enquired into, actually decided that it was a good mookurruree, and remanded the case back to the sudder ameen, with orders to decide accordingly, and to nonsuit on the point of balance of rent, with reservation to the plaintiff to sue separately for the same.

In pursuance of these orders, the sudder ameen decided, as directed, though protesting against the right of deciding according to his own judgment being invaded. This second decision was affirmed on appeal to the additional judge.

The Court consider the act of the additional judge, in dictating to the sudder ameen what decision he should pass, as essentially vitiating the entire proceedings; nor can the Court see any necessity for such proceeding, as the first decision of the sudder ameen being in appeal before the additional judge, it was competent to that officer to dispose of the case himself, in any manner he deemed proper. Under these circumstances, the Court quash the whole of the proceedings in this case, and remand it to the judge, who will again refer it for trial to the sudder ameen, who will dispose of it according to his own judgment.

THE 26TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 130.

IN the matter of the petition of Rajah Mode Narain, filed in this Court, on the 11th March 1844, praying for the admission of a special appeal, from the decision of additional judge of zillah Behar, under date the 12th December 1843, affirming that of Mahomed Ibrahim, sudder ameen of that district, under date 1st September 1843, in the case of Rajah Mode Narain Sing, plaintiff, *versus* Nemkoonwur, defendant.

It is hereby certified that the said application is granted on the following grounds.

This case is precisely similar to that on petition No. 129, a special appeal in which has been this day admitted. The certificate in that case is as follows.

“This suit was instituted by the petitioner to recover a balance of rent alleged to be due from the defendants, and also to cancel a mookurrurree lease, under which they held the lands. The suit was laid at Company’s rupees 109-5-9, the amount balance said to be due.

“The case was tried, in the first instance, by the sudder ameen, who gave a decree for a portion of the balance claimed; but dismissed the claim as respected the annulment of the mookurrurree lease, on the ground that a balance of rent was no legal ground for doing so. An appeal was preferred to the additional judge, who considering that the question of mookurrurree ought to be enquired into, actually decided that it was a good mookurrurree, and remanded the case back to the sudder ameen with orders to decide accordingly, and to nonsuit on the point of balance of rent, with reservation to the plaintiff to sue separately for the same. In pursuance of these orders the sudder ameen decided as directed, though protesting against the right of deciding according to his own judgment being invaded. This second decision was affirmed on appeal to the additional judge.

“The Court consider the act of the additional judge, in dictating to the sudder ameen what decision he should pass, as essentially vitiating the entire proceedings; nor can the Court see any necessity for such proceeding, as the first decision of the sudder ameen being in appeal before the additional judge, it was competent to that officer to dispose of the case himself in any manner he deemed proper.

“Under these circumstances, the Court quash the whole of the proceedings in this case, and remand it to the judge, who will again refer it for trial to the sudder ameen, who will dispose of it according to his own judgment.”

THE 26TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 131.

IN the matter of the petition of Rajah Mode Narain, filed in this Court on the 11th March 1845, praying for the admission of a special appeal, from the decision of additional judge of zillah Behar, under date the 12th December 1843, affirming that of Mahomed Ibrahim, sudder ameen of that district, under date 1st September 1843, in the case of Rajah Mode Narain Singh, plaintiff, *versus* Musst Mankoonwur and Tekkoonwur, defendants.

It is hereby certified that the said application is granted on the following grounds.

This case is precisely similar to that on petition No. 129, a special appeal in which has been admitted this day. The certificate in that case is as follows.

“This suit was instituted by the petitioner to recover a balance of rent alleged to be due from the defendants, and also to cancel a mookurrurree lease, under which they held the lands. The suit was laid at Company’s rupees 109-5-9, the amount balance said to be due.

“The case was tried, in the first instance, by the sudder ameen, who gave a decree for a portion of the balance claimed; but dismissed the claim as respected the annulment of the mookurrurree lease, on the ground that a balance of rent was no legal ground for doing so. An appeal was preferred to the additional judge, who considering that the question of mookurrurree ought to be enquired into, actually decided that it was a good mookurrurree, and remanded the case back to the sudder ameen with orders to decide accordingly, and to nonsuit on the point of balance of rent, with reservation to the plaintiff to sue separately for the same. In pursuance of these orders the sudder ameen decided as directed, though protesting against the right of deciding according to his own judgment being invaded. This second decision was affirmed on appeal to the additional judge.

“The Court consider that the act of the additional judge, in dictating to the sudder ameen what decision he should pass, as essentially vitiating the entire proceedings; nor can the Court see any necessity for such proceeding, as the first decision of the sudder ameen being in appeal before the additional judge, it was competent to that officer to dispose of the case himself in any manner he deemed proper.

“Under these circumstances, the Court quash the whole of the proceedings in this case, and remand it to the judge, who will again refer it for trial to the sudder ameen, who will dispose of it according to his own judgment.”

THE 26TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 180.

IN the matter of the petition of Mohunt Ram Pershad Doss, filed in this Court, on the 2d April 1844, praying for the admission of a special appeal from the decision of Hedayt Ali Khan, principal sudder ameen of zillah Behar, under date the 26th December 1843, reversing that of Ashruf Hosein, sudder ameen of that district, under date 24th February 1840, in the case of Mohunt Ram Pershad Doss, plaintiff, *versus* Inamee Begum, defendant.

It is hereby certified that the case be sent back to the judge on the following grounds.

The petitioner sued for possession of 15 beegahs of land, held rent-free, in mouzah Ismaelpore, intimating his intention of bringing another suit for three other beegahs from which he had been dispossessed by the same defendant. The sudder ameen of Behar passed a decree in favor of the plaintiff on the 24th February 1840. The former principal sudder ameen, on the 27th December 1842, nonsuited the plaintiff because he had not sued for the whole 18 beegahs. On an application for a special appeal, the additional judge of Behar sent back the case, with instructions to allow the

plaintiff to file a supplementary plaint for the three beegahs and to decree the claim in favor of the plaintiff. The present principal sudder ameen, disregarding the instructions of the additional judge, decided the case on its merits, and dismissed the claim.

The Court observe, that the case having been sent back by the judge for re-trial, on the supplementary plaint, ought to have been tried by the sudder ameen; but that as it was tried by the principal sudder ameen, his decision must be considered as an original decision, and, as such, regularly appealable to the judge. They therefore direct that the petition of special appeal be transmitted to the judge of Behar, with instructions to consider it as a petition of regular appeal, and dispose of it accordingly.

THE 26TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 462.

IN the matter of the petition of Lall Mahomed Mundle, filed in this Court, on the 27th November 1843, praying for the admission of a special appeal from the decision of the principal sudder ameen of zillah 24-Pergunnahs, under date the 29th August 1843, reversing that of the moonsiff of Hobrah, under date 27th April 1843, in the case of Musst. Taramonee, plaintiff, *versus* Lall Mahomed Mundle, defendant.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued defendant on a bond in the moonsiff's court in which his action was dismissed. An appeal was preferred and tried *ex parte* by the principal sudder ameen, who gave judgment in favor of plaintiff.

An application was this day made by the petitioner, respondent, for admission of a special appeal, on the grounds (as urged in the 3d paragraph of the reasons recorded on the back of the petition) that no notice was served on the petitioner while the case was

before the principal sudder ameen. The judge of the 24-Pergunnahs, under the order of this Court, dated 17th September last, enquired into the truth of this allegation and sent up his report of the 4th December following.

The record shews that notice for the petitioner's appearance was issued through the nazir of the principal sudder ameen's court, by whom a return was made, to the effect that he, the respondent, duly signed and acknowledged receipt of process in the presence of two witnesses, viz., Ishor Sirdar and Durein Mundle, who also subscribed the notice.

The evidence of these witnesses having been taken by the judge as directed, the former deposed to the due service of notice, the latter denied all knowledge of it. The petitioner pleads he can read and write, and that the mark on the notice is not his.

The Court observe that such notice, so served, cannot be considered under the law as sufficient, and therefore direct that the case be re-tried by the principal sudder ameen.

THE 28TH APRIL 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 101 OF 1844.

Regular Appeal from Principal Sudder Ameen of Dinagapore.

RAMPERSAD RAY, ADOPTED SON OF DHOOP ISOREE

CHOWDRAIN, (DEFENDANT,) APPELLANT,

versus

GOBRAD CHUNDER BABOO, (PLAINTIFF,) RESPONDENT.

THIS action was brought by the respondent, on the 23d June 1843, or 10th Assar 1250, against the appellant, to recover the sum of 9000 rupees principal, and interest thereon, up to date of plaint,

372 rupees, on a bond signed by the appellant on the 8th Phalgun 1249. Plaintiff states, it was payable in Srabon 1250. In consequence, however, of disputes arising between Rampersad and his mother, Dhoop Isoree, and their making away with the estate, he filed his plaint before the bond fell due.

The appellant, in his answer before the lower court, states that the plaintiff and his brother collected all the rents of his mother's estate; that a sum of 1,50,000 rupees of her's is in their hands; that he advised her to withdraw it from their house; that the plaintiff, however, induced her to believe he, appellant, would make away with the money, and caused her to turn him away from his home. He goes on to say, that about this time, the estate of Noor Allee Chowdree, called Bhundar Deh, was to be put for sale in execution of a decree, and his mother desired him, as it adjoined their own estate, to go and purchase it. She directed him to apply to Kirtie Chand and his brother, the plaintiff, for funds for this purpose, which they agreed to furnish from the amount at credit of Dhoop Isoree in their hands. On the 8th Phalgun accordingly appellant asked them, in the presence of his mother, for the amount to be deposited at the sale. They, however, refused to advance the money, as Dhoop Isoree had not brought the account of the sums she had with them; but offered to lend 9,000 rupees on separate bond, to be returned when the sale should be completed. Such loan, at the same time, to be carried to account. Appellant adds, that some bags of cash were brought; but that he did not receive the money. Respondent said, "go and buy the estate, there is no necessity for you to take the amount of deposit. I am the treasurer of the collectorate, and will carry the amount of deposit to your account, on sight of your chullan." The estate was not sold; and appellant says, on his being about to return home, he asked for return of the bond, when respondent promised to make it over to Dhoop Isoree. He then asked his mother for the bond, who made sundry excuses regarding it; said she had forgotten it, and at length respondent and Dhoop Isoree began to dispute with him, and the latter again turned him out of the house, and charged him with theft in the foudaree court. Appellant concludes, by saying, that respondent and Dhoop Isoree, his mother, have instituted this action before the bond fell due.

Plaintiff, respondent, in his reply, denies that Dhoop Isoree has the funds alluded to by Rampersad, in his house; and urges that were such the fact, there would have been no necessity for her sending her son to borrow the amount of the bond now produced.

The principal sudder ameen, on the 14th December 1843, decreed for the plaintiff, for the reasons recorded in his proceedings of that date. Several respectable witnesses, he observes, prove the payment of the cash to the defendant, whose servants carried it

away. If he did not receive the amount, he ought immediately to have demanded a return of the bond, which he acknowledges to have given. The three witnesses to the bond brought forward by the defendant, are his dependants, and their evidence is contradictory. One of them, Sheebrittun, deposes the bond was drawn out, and the amount of it left in charge of the plaintiff by the defendant; the others do not mention this, though questioned. He concludes by saying, there is no necessity, under the above circumstances, to summon plaintiff's brother as a witness, as requested by the defendant; and gives a decree in plaintiff's favor, with costs.

BY THE COURT.

It appears this action was entered upon one month and nine days only, before the amount due on the bond was payable. The defendant admits the bond; but denies receipt of the cash. Under the circumstances of this case, the Court do not consider the defendant entitled to claim a nonsuit, on the ground that the period for payment had not expired. The amount of the bond was due seven days after the defendant filed his answer, acknowledging execution of the deed; and, in equity, he cannot be allowed to avail himself of the plea, that the bond had not arrived at maturity. On the subject of admission of a suit, for a sum due on bond, before the expiration of the period specified in the obligation, the Court observe that the case of Mohunt Runjeet Geer, appellant, *versus* Kunnahai Lal and others, respondents, forms a precedent (Vol. III. page 68 of Sudder Dewanny Reports.) As to the receipt of the cash, the Court entertain no doubts, and fully concur with the principal sudder ameen as to the sufficiency of evidence on that point. They therefore affirm the decision passed by that officer, and dismiss the appeal, with costs.

THE 3D MAY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 267 OF 1843.

Regular Appeal from a decree passed by the second Principal Sulder Ameen of Tirhoot, Syud Ushruf Hosein, August 29th, 1843.

DURBAREE LAL SAHOO, SUKHEE CHUND SAHOO,
(DECEASED,) HURNUNDUN LAL, POOKH LAL, AND LAL-
JEE SAHOO, HEIRS OF SUKHEE CHUND, APPELLANTS,
(PLAINTIFFS,)

versus

BABOO RAM NURAIN SINGH AND MUSST. RAM KON-
WUR, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellants, on the 30th September 1842, to recover from respondents the sum of ninety thousand five hundred and sixty-five Company's rupees, nine annas and ten pie, [Co.'s rs. 90,565-9-10] principal and interest, under a bond, bearing date the 6th Pooos, 1241 Fuslee.

The bond, executed on the date just mentioned, was granted by Musst. Ram Konwur, the paternal grandmother, and Musst. Ghunesham Konwur, the mother of the respondent, Ram Narain Singh, then a minor; they being his legal guardians. The amount of the bond was a lakh and eight thousand Sicca rupees, [Sa. rs. 108,000.] It was given on an adjustment of former debts, amounting to 83,000 rupees, due to appellants by Roop Narain, Ram Narain's father, as well as to satisfy certain decrees of court; for which latter call, 25,000 rupees were borrowed at the time of execution.

On the 15th of the same month of Pooos, on the 6th of which the bond had been granted, a mortgage bond, or burnanameh, was executed between the same parties; under which appellants were to hold certain lands (as set forth) belonging to respondents; and, after deducting revenue dues, and expenses of establishment, to appropriate the rents to, in the first instance, the payment of the interest of the bond-debt, and then, if any surplus should remain, to a reduction of the principal. It was calculated, that the usufruct so appropriated would satisfy the debt in nine years; and appellants were to hold the estate, on the terms specified, from 1241 to 1249

F., continuing in possession beyond this period, should any thing still be due, till the entire loan should be liquidated.

Both the deeds were registered on the same day, February 17th 1834, or 23d Magh 1241 Fusalce.

On the 15th March 1842, the respondent, Ram Narain, having petitioned the criminal court for possession of the estate, as the heir of Roop Narain and Ubhee Narain, (his paternal uncle,) and the session judge, not finding appellants in actual occupancy, but merely receiving the rents from farmers, and others cultivating the lands, an order was passed declaring, under the law, Ram Narain to be entitled to what he claimed. He was put in possession accordingly; and appellants, being debarred from all further interference, or exaction of rents, instituted the present action for the balance still due to them under the bond.

It is sufficient to add to what has been above stated, that the execution of the bond, and burnanameh, and registry of both, were established by evidence; that the competency of the female guardians of Ram Narain, who granted them, was proved to the satisfaction of the court; that the various documents, explanatory of former dealings between appellants and Roop Narain, had been cancelled and returned when the new bond was given; and that the pleas of Ram Narain, impugning that transaction and the proceedings connected with it, were deemed insufficient to affect their validity.

He had contended that, as guardians, they had exceeded their authority; that the old account was made up to the sum exhibited, by usurious and illegal interest; and that the only debt really due, was that of his father, amounting to some 48,000 rupees; besides which, the account shewed that the original claim of appellants had been more than satisfied by the usufruct of the lands held by them, and he had instituted a separate action for a refund of the excess received by them.

On the 29th August 1843, the principal sudder ameen, deeming the two deeds good and valid, balanced the accounts of the parties, and found due to appellants Company's rupees 27,871-10, which he decreed in their favor against Ram Narain accordingly.

Both parties appealed from the decision, each urging their conceived rights by the arguments before advanced, and appellants also objecting to the mode adopted by the principal sudder ameen in the adjustment of the final accounts, by the result of which he was guided in his judgment. He had allowed interest on rent payments, as well as on the bond-debt, and this was protested against as contrary to the agreement.

With reference to the evidence of appellants, which, amongst other things, satisfactorily establish the fact of the respondent Ram Narain's having, as well after as before attaining his majority, taken an active part in the engagements entered into by his guardians,

manifesting in repeated instances both his assent to and approval of them; and to that which proves the correctness of the mode observed by the principal sudder ameen in adjusting the accounts on which he founded his decree; the Court do not find any reason to interfere with the judgment impugned, which is affirmed accordingly, with costs of appeal payable by appellants.

THE 3D MAY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 17 OF 1844.

Regular Appeal from a decree passed by the second Principal Sudder Ameen of Tirhoot, Syud Ushruf Hoscin, August 29th, 1843.

BABOO RAM NURAIN SINGH, APPELLANT, (DEFENDANT,)

versus

DURBAREE LAL SAHOO, SUKHEE CHUND SAHOO,
(DECEASED,) HURNUNDUN LAL, POOKH LAL, AND LAL-
JEE SAHOO, HEIRS OF SUKHEE CHUND, RESPONDENTS,
(PLAINTIFFS.)

THE particulars of this case are detailed under No. 267 of 1843, decided this day.

The appeal of Ram Narain Singh is against the decree of Company's rupees 27,871-10, passed in that case, in favor of respondents, on the grounds already stated. The judgment having been affirmed in that appeal, the present of course has been virtually determined, and nothing remains but to furnish this record of the fact, to be filed with the proceedings.

The present appeal is dismissed, with costs payable by appellant.

THE 3D MAY 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 18 OF 1844.

*Regular Appeal from a decision passed by the second Principal
Sudder Ameen of Tirhoot, Syud Ushruff Hosein, August 29th,
1843.*

BABOO RAM NURAIN SINGH, APPELLANT, (PLAINTIFF,)

versus

DURBAREE LAL SAHOO, SUKHEE CHUND SAHOO,
(DECEASED,) HURNUNDUN LAL, POOKH LAL, AND LAL-
JEE SAHOO, HEIRS OF SUKHEE CHUND, RESPONDENTS,
(DEFENDANTS.)

THIS suit was instituted by appellant, on the 12th of August 1842, to recover from respondents the sum of fifty-two thousand two hundred and sixty-five Company's rupees and twelve annas, (Company's rupees 52,265-12-0,) principal and interest, amount of collections illegally made, in excess of an amount due under a burnanameh from the estate of appellant.

The disposal of the case No. 267 of 1843, this day, when the decree passed by the second principal sudder ameen, in favor of the respondents in this appeal, was affirmed, was tantamount to a rejection of the claim preferred by appellant. The particulars of the transaction which led to the present action, will be found under No. 267; and nothing further is necessary here, than the usual judicial order, shewing the decision of the second principal sudder ameen, dismissing appellant's claim, to have been affirmed by the Court. The appeal is dismissed, with costs payable by appellant.

THE 3D MAY 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE

CASE No. 112 OF 1844.

*Regular Appeal from the decision of Mr. James Reily, Principal
Sudder Ameer of Dacca.*

SOOLTANNISSA BEGUM AND MEER GHOOLAM

HOSSEIN, APPELLANTS,

versus

MEER MOHUMUD BAKUR AND OTHERS, RESPONDENTS.

THE facts of the case are as stated in the following decision of Mr. Reily written by him in English.

“ No. 10349.

“ SOOLTANNISSA BEGUM AND ANOTHER, *versus* MEER
MUHUMUD BAKUR AND OTHERS.

“ ADJUDGED 11TH JANUARY 1844.

“ 28TH Pous 1250.

“ Plaintiffs declare that they are heirs of Oomda Begum ; that the deceased had sued the heirs of Meer Nuwaub, when defendants acknowledged the justice of her claims, and having put in a safee-namah, the suit was accordingly disposed of; that defendants retained the lands in their joint tenancy, and executed an ekrar in favor of Oomda Begum, engaging to give her the profits; that she during life received the profits, and in Assar 1237 died. Plaintiffs therefore claim possession of the deceased's estates.

“ Abdool Gunee, defendant, writes that Oomda Begum, had, in 1235, brought an action for the lands sued for; and, on the 11th Assin 1235, Begum executed a bil-ewooz-hebah in favor of Meer Jymul Abdin; that the hebah was filed in the case before the court; and, according to petitions presented from both sides, the case was disposed of, and the hebah thereby confirmed; that under these circumstances, how can plaintiff be entitled to the property sued for?

"Meer Nujuf Alce contends that the property was given to his father *alone*; that plaintiffs, nor any one else, have any right to it.

"Points for consideration :

"Whether Oomda Begum made a gift of the property to defendant.

"Referring to the documents filed in the case, namely, the decree of the provincial court of appeal, dated 13th Aghun 1235, the report of Radhakanth Sen, mohurir, dated 25th November 1828; the petition of Oomda Begum, dated 11th Assin 1235; and two deeds of gift; we find that Oomda Begum had sued the heirs of Meer Nuwaub for the property in question; that both parties amicably settled their disputes, and Oomda Begum made a gift of the property in the name of Meer Jan, and put in a dustburdaree of her claims. This hebah and dustburdaree was then tested by enquiries made through the amlahs of the court; and the court, admitting the hebah and dustburdaree, disposed of the case so far back as the year 1235. 'Tis sixteen years since that order was passed. The decree given by this court, No. 8877, shews also that Doordana Begum and Tooa Bewa had sued Meer Ahmud Jan and others, for 3 annas, 13 gundas, 2 crunt share of the property, *inclusive of the share acquired in consequence of Oomda Begum's gift*; that on proof that Oomda Begum had made a gift to all of Meer Nuwanb's heirs, her share was divided, and the decree given in favor of Doordana, a daughter of the Meer Nuwanb. This decree was confirmed in appeal. Moreover, from the date of the hebahnamah, 11th Assin 1235, to the date of plaint, 28th Bhadr 1249, more than twelve years have lapsed. Reckoning from the date of Oomda Begum's demise, it is true that only 11 years, 11 months, and 28 days, have lapsed, that is, that two days still remain of twelve years, but the cause of action arose from the date of the deed of gift. Having sued after so long a period of time, that in itself raises a presumption in favor of the genuineness of the gift. Though plaintiffs maintain that the heirs of Meer Nuwaub gave Oomda Begum an *ekrar*, engaging to pay her sixty rupees monthly; that they paid her this stipend out of the proceeds of the estate; and that a hebah of this description is not valid according to the Mahomedan law; but plaintiffs *have not filed or proved this ekrar*. And the deed of gift was a bil-ewooz-hebah, which is equivalent to a sale. And though Syed Ali Mendee Khan, one only of *plaintiffs' witnesses*, has deposed that the property, given in exchange for the gift, was his; that after the hebah was executed, the articles were returned to him, and Oomda Begum did not get them. But of what avail is the statement of one witness only? He has, however, by admitting that a pearl necklace, and other articles, were given in exchange for the property transferred by the hebahnamah, proved the genuineness of the transaction. The law says that "a hebah-bil-ewooz is said to resemble a sale in

all its properties; the same conditions attached to it, and the *mutual seizure of the donees is not in all cases necessary.*" (See Macnaghten's Mahomedan Law, page 52.) And what is more, the donor herself survived the transaction nearly twelve years! And if she, in all that time, never disputed the transaction, can the objection apply now on the part of her successors? This witness resides in the city, and is always seen going about, yet when subpoenaed, pleaded illness, as an excuse for not appearing in court. An amlah of the court was at length commissioned to take his deposition, and this was done to prevent the loss of his evidence in case of his demise. Defendants were opposed to his evidence being thus taken; and as his alleged illness appears doubtful, it would appear, from Act VII. 1841, (section 5,) that his evidence is not admissible.

"Nujuf Ali (defendant) contends that Oomda Begum had made a gift to his father *exclusively*. But it has been already stated that in Doordana Begum's suit, it is proved that the deed of gift, though in the name of Meer Jan only, the gift was made to the *whole* of Meer Nuwaub's descendants. Be this as it may, the point concerns defendants alone; and it is unnecessary in this case to enter upon a discussion that cannot affect plaintiff's interests.

"Plaintiff's case is therefore dismissed."

It appears to me, that this action is clearly barred by the rule of limitation: for, whether the deed executed by Oomda Begum, is regarded as a deed of gift, or as an alienation for an equivalent, in either case, it was incumbent on the appellants to sue within 12 years from the date of execution. I accordingly confirm the decree of the principal sudder ameen, rejecting the appeal, with costs. The principal sudder ameen is wrong in stating, that Oomda Begum survived the execution of the deed nearly 12 years; but this error of fact does not impugn the soundness of his decision.

THE 3D MAY 1845.

PRESENT:

J. F. M. REID,

JUDGE.

PETITION NO. 454.

In the matter of the petition of Suroopa Dossea, and others, filed in this Court, on the 22d June 1844, praying for the admission of a special appeal from the decision of Mr. O. Mackay, principal sudder ameen of Mymensing, under date the 21st March 1844, altering that of Mahomed Moonhim, moonsiff of Bazeedpoor, under

date 14th May 1843, in the case of Suroopa Dossea, and others, plaintiffs, *versus* Oochub Doss Byragee, and others, defendants.

It is hereby certified that the case was sent back to the principal sudder ameen for the following reason. The plaintiffs sued for possession of two annas of talooks Mustear and Meesar Kandee, under two kubalehs, or deeds of sale, executed, the first on the 5th Assar 1234, by Jugmohun Dutt, and the other, on the 31st of the same month, by Hurgovind Dutt. The moonsiff dismissed the claim *in toto*. The principal sudder ameen decreed to plaintiffs the one anna share, conveyed by the last mentioned deed of sale; but is quite silent as to the other one anna share. The case is therefore sent back with instruction to the principal sudder ameen to pass a proper order in regard to that share also. The defendant Oochub Doss presented a petition for a special appeal from that part of the decree, which awarded to the plaintiffs the one anna. As the decision has been sent back as incomplete, it is not necessary to retain this petition on the file. Let it be struck off. Should Oochub Doss be dissatisfied with the principal sudder ameen's amended decree, he may apply again to the Court. The usual order in regard to the refund of the stamp paper to Oochub Doss.

THE 5TH MAY 1845.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,

and
R. BARLOW,

TEMPORARY JUDGE.

CASE No. 254 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Madnapore.*

RAJAH LUKHEE NARAIN RAY, (PLAINTIFF,) APPELLANT,
versus
MUDDEN MOHUN ADHIKAREE, AHSAN ALLAH KHAN,
AND OTHERS, (DEFENDANTS,) RESPONDENTS.

PLAINTIFF, on the 22d September 1840, brought this action against the defendant Mudden Mohun and Ahsan Allah, a police darogah, &c. for damages to the extent of rupees 10,00,000, ten lacs

of rupees, alleging that Mudden Mohun, on the 6th May 1835, had falsely charged him with dacoitee, and that the darogah had in violation of the magistrate's order searched his house.

The defendant, Mudden Mohun, answers, plaintiff is at enmity with him, because he is a moktear of Rooder Narain, who claimed to be adopted son of Anunderam Roy; on whose part he conducted some cases against plaintiff in the civil court. Defendant states he was absent from home on the night of the dacoitee; but on hearing of it returned, and in his deposition before the darogah charged plaintiff and others as having been the originator and perpetrators of it. He also adds that the rajah's natural father and relatives have been apprehended on similar charges in other cases.

The principal sudder ameen, on the 14th June 1842, dismissed the suit, because the rajah's appeal for redress to the commissioner was rejected, because he did not trust to copies of proceedings in the foudaree court, and because he was of opinion the rajah had not in any way suffered in character, in consequence of the charge which had been preferred against him.

BY THE COURT.

It is clearly proved by the record that the defendant, Mudden Mohun, did charge the plaintiff with dacoitee. The magistrate, in his proceedings of the 3d July 1835, released all the parties charged, and, being of opinion that no dacoitee had in fact occurred, caused it to be struck out of the list of offences reported. The darogah does not appear to have exceeded the power with which the police are invested in such cases. The plaintiff has made use of no measured terms in his plaint, towards the defendant, and took no steps, it will be seen, to vindicate his character for five or six years subsequent to the date of the defamation, for which he now seeks compensation or damages to the amount of 10,00,000 rupees. It was incumbent on the defendant to weigh well the circumstances under which he took upon himself to charge an innocent party with so heinous an offence, and he is not justified in having done so, supposing the dacoitee to have occurred, without reasonable grounds for his belief of the plaintiff's participation in the crime.

After due consideration, the Court award 500 rupees damages with costs proportionably against the respondent, Mudden Mohun Adhikaree. Plaintiff's suit against Ahsan Allah is dismissed, and his costs are payable by plaintiff.

THE 7TH MAY 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 71 OF 1838.

Regular Appeal from the decision of the Judge of Nuddeah.

MEER KOODRUT OOLAH, INAUT OOLAH, AND MEER
ZEENUT OOLAH, APPELLANTS,

versus

MEER RUMZAUN OOLAH, MEER KARM OOLAH, &c.

RESPONDENTS.

THE appellants, as plaintiffs, sued the respondents for possession on certain shares of landed and other property (paternal,) valuing their claim at rupees 10,252 15 annas 2 cowries, and instituted their suit in the Calcutta provincial court, which, on the abolition of the court, was transferred to the zillah court of Nuddeah. There the claim was dismissed; and Koodrut Oolah alone, as a pauper, appealed to this Court.

In this Court, it was decided by two Judges in concurrence, that the claim of the plaintiff, appellant, was good in law, and that the respondents had failed to prove the allegations of their answer, and the appellant was ordered to be put into possession of his lawful share of all the property left by his ancestor.

After this Inaut Oolah and Zeenut Oolah, petitioned for a review of judgment, as they had not been included in the decision given in favor of Koodrut Oolah; and their prayer was eventually granted.

Previous to this, the respondents had applied for a review of judgment, on the ground that they had been prevented filing the deed which corroborated their allegations in defence, by an order of

the zillah judge; and that the decision of this Court was given in error, inasmuch as it asserted that the testimony of one witness only proved their statement, whereas four witnesses had deposed to the same effect, though their depositions had not been sent to this Court with the record of the case. Their petition was rejected by Mr. Warner alone, without reference to the concurring judge, as in the other petition of Inaut Oolah.

JUDGMENT.

A review having been granted; according to the practice of this Court, we deem the whole case re-opened for investigation.

On a careful consideration of all the proceedings, we find that the defendants, respondents, were not allowed to file their proofs in the zillah court, in consequence of a previous default; yet, notwithstanding, the suit was dismissed. On appeal in this Court, the claim of appellants was decreed without any further evidence having been taken. Thus the allegations in the answer, that the father of the parties had in his life time, made a division of his property among all his children; that the plaintiffs, suing as paupers, had ruinously to them, exaggerated enormously the amount of ancestral property, and that much of what they claimed was not ancestral property, were never investigated. The Court further observe, that the whole of the costs were adjudged against the respondents, although the portion decreed of the property claimed was not specified, and was indeed left to be ascertained at the time of execution of decree. Therefore ordered, that the case be returned for re-trial; and that the judge receive all the evidence either party may produce, both with regard to the actual amount of ancestral property left, and to the fact of the alleged division, and then decide; awarding costs in the event of a decree, in proportion to the amount of property decreed.

THE 7TH MAY 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 3 OF 1843.

Special Appeal from the decision of the Judge of Purneah.

SHEIKH IMAUM BUKSIL, (DEFENDANT,) APPELLANT,

versus

SHEIKH GHOOLAM RUSOOL, (PLAINTIFF,) RESPONDENT.

THE plaintiff sued for recovery of 900 rupees, with interest, deposited with defendant, eleven years previous, producing in evidence two witnesses, and a receipt originally on unstamped paper.

THE defendant admitted the deposit and the receipt; but pleaded re-payment, and produced four witnesses, and a receipt, also on unstamped paper of re-payment.

THE principal sudder ameen dismissed the claim, deeming the length of time that plaintiff had allowed to lapse, before suing, a strong presumption of re-payment. The plaintiff then appealed to the judge, and introduced new evidence to shew non-re-payment, viz. several notes from defendant, promising to pay; bearing date subsequent to his alleged receipt of re-payment. The judge, on the strength of these notes, and on account of the low condition of the defendant's witnesses, reversed the decision of the principal sudder ameen, and decreed the claim.

A special appeal was granted by the Sudder Court, to try the propriety of adjudging interest on a deposit.

THERE are two points for consideration in this case—1st, Whether the amount deposited, by plaintiff, with defendant, was ever restored or not. In proof of restoration, the defendant has filed a receipt given by plaintiff. In it however is no mention of the receipt given by defendant, at the time of deposit, having been mislaid; and the Court hold that it is incumbent on the person repaying money, in case of the original document of its receipt or deposit having been lost, to have that fact inserted in the new receipt taken of re-payment, or restoration. Moreover, the Court

have reason to doubt the truth of the receipt filed by defendant; the paper being very old, and the writing apparently very fresh. They therefore reject the receipt; and deem the restoration of the deposit not proved.

On the 2d point, whether interest should be allowed or not. The Court are decidedly of opinion that no interest can be claimed on a deposit re-payable on demand, without proof of demand. They therefore decree the principal of the deposit, and interest from the date of the receipt of defendant endorsed on the notice to answer to this suit, and costs in due proportion to the amount decreed.

THE 7TH MAY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 63 OF 1844.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Majid Khan, November 23d, 1843.

SHEIKH SULAMOOLAH *alias* DURGAIHEE, AND SHEIKH MEHUR ALI, APPELLANTS, (PLAINTIFFS.)

versus

SHEIKH BURKUT HOSEIN AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

THIS suit was instituted by appellants, on the 3d August 1842, to recover from respondents mesne profits, or *wasilat*, for ten years, from 1230 to 1239 F. that is, on lands pertaining to mouzahs Mukhdoompore and Puchouta, amounting to Company's rupees seven thousand four hundred and seventy-nine, seven annas, and five pie (Co.'s rupees 7,479-7-5.)

A decree had been passed on the 26th June 1824, affirmed on the 9th March 1832, for the lands; and, in virtue of that decree, the present suit was instituted, ten years after the latter and fourteen after the former decision; and no reason assigned for the delay. There is no allusion to *wasilat* in the proceedings of those cases, nor in the orders of either court in disposing of them; the evidence adduced in support of the claim, is contradictory and from hearsay; the putwarees' accounts are not signed; it is not established that the principal respondent, Burkut Hosein, had possession during the

period for which he is called upon to pay; and the case had already been submitted to arbitration, and the demand formally dismissed by a regular judgment bearing date the 30th December 1839, nearly three years before the courts were appealed to.

With reference to the above facts and circumstances, the principal sudder ameen dismissed appellant's claim; and, on the same grounds, the decision appealed from, is affirmed, with costs payable by appellants.

THE 9TH MAY 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 66 OF 1844.

Regular Appeal from the decision of Moulvie Looft Hossein, Principal Sudder Ameen of Jessore.

USHIRUFFOONNISSA BEEBEE, WIFE OF SULEEMOOLA
CHOWDRY, APPELLANT,

versus

SUDDER-OD-DEEN BISWAS, RESPONDENT.

THE respondent had obtained a decree against Suleemoola, and in satisfaction of that decree, had caused the attachment of certain property of Suleemoola, with a view to the sale of the same. Included in this attachment, were certain houses and a garden, &c. The present appellant filed objections with respect to these, alleging that they had been created by her out of her own means, and were her own property. Her objections, however, were overruled by summary orders, and she instituted the present suit in the zillah court of Jessore on the 30th May 1843, to have the attachment withdrawn, and her right to the property in question upheld, laying her action at rupees 9,993.

The defendant answered, that the present suit was merely collusive—an attempt of Suleemoola to evade the payment of the claims against him, through the instrumentality of his wife.

The principal sudder ameen, on the 27th November 1843, dismissed the suit with costs, on the grounds, that no other proofs had been produced by the plaintiff to shew that the property was hers,

than those which had formerly been filed in the miscellaneous case, and that the circumstances manifestly indicated collusion.

The fraudulent alienation of property, in order to evade the satisfaction of decrees, is so common, that when the wife of a Mahomedan sets up a claim to property, which apparently belongs to her husband, nothing short of full and satisfactory proof in support of the claim, ought to induce a court to uphold that claim. In the present case, the appellant ought to have proved, that she was in possession of wealth belonging to herself, and how she came by that wealth. Then she ought to have satisfactorily established the fact, that the houses were built, and the garden made by her, or at least out of her funds, and under her superintendence. In my opinion, the appellant failed entirely to adduce the above kind of proofs, in support of her alleged right to the property in question, and I accordingly reject the appeal, confirming the decree of the court below.

THE 13TH MAY 1845.

PRESENT:

A. D I C K,

JUDGE.

CASE No. 147 OF 1843.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Zillah Cuttack.*

RAM CHURN DAS, PAUPER, (APPELLANT,)

versus

CHUTTUR BHOJE AND RAM UNOOJE DAS, (RESPONDENTS.)

THE appellant instituted this case, asserting his right to the gуд-dee of the muth Dukin Paris, dependent on Balshahee, laying his suit at 5,74,573-6-9, of which he had been deprived by the proceedings of the local agents, acting under Regulation XIX. 1810. The foundation of his claim rested on the succession to the superintendency of the muth being hereditary, and therefore, he being chola or pupil of the last mohunt, and the person selected only a gooroobhaee, or spiritual brother, he should have been preferred, and appointed mohunt. The respondent contended that he himself had been properly elected, that the appellant had been excluded

from the selection on account of misappropriation of the property of the temple, and that the succession was not hereditary but elective.

The principal sudder ameen deeming the election and appointment of respondent to the superintendency, proper and correct, rejected the claim of appellant and dismissed his suit.

JUDGMENT OF THE SUDDER COURT.

In the record of this case, the Court found nothing, which could shew whether the muth in question was hereditary, or elective. They therefore sent for the record in the case of Mohunt Rama Nooj Das, decided on the 17th June 1839, and reported in volume vi. page 262, Sudder Dewanny Reports. On perusal of the depositions therein taken by order of this Court, of the mohunts of the muths in Cuttack around Juggurnath, on this very point, it appears, that the muth or temple in question in this case is hereditary, and that in muths of this class, a successor is usually nominated by the mohunt during his life time; if not, after his death, the disciples or chelas and gooroobhaces, or spiritual brethren, assemble, and select the eldest chela, or disciple, if properly qualified; otherwise some other of the chelas, gooroobhaces, or even chelas, &c. of another muth. If they cannot agree in their choice the ruling power is applied to, who commands an assembly of mohunts to select a proper person, whom he confirms in the guddee or superintendency.

In this case, the former mohunt appointed no successor, and in consequence of several claimants starting up, complaints were preferred to the register, the head civil authority in the district; and he, after a reference to the brethren of the muth, about the appellant's qualification for the guddee, appointed him. The commissioner of the province, who was vested with the full powers of the Sudder Adawlut, cancelled the whole of the register's proceedings, as illegal, and referred the case to the local agents under Regulation XIX. 1810. The local agents, after excluding the appellant on account of his having misappropriated by alienation property of the temple, during the time he held the superintendency under the sanction of the register, directed another assembly for selection of a proper successor to the late mohunt. The assembly elected the respondent, and gave in detail their reasons for the same. The respondent was therefore appointed to the guddee by the local agents, and the appointment confirmed by the commissioner. Thus then all was done according to established usage, and the only point for consideration is, whether the appellant was justly and legally excluded from the selection by the local agents.

It is true, as has been urged by the appellant's pleaders, and apparent in the bywastha given in the case of Rama Nooj Das above cited, that misappropriation is not specified as a disqualification in the shastres; but the Regulation XIX. 1810 was enacted, and the

local agents appointed expressly for the purpose of preventing misappropriation of the funds and property of temples, &c. and therefore the local agents were bound to consider it a disqualification. Their decision on that point was not appealed from to the commissioner by the appellant, and indeed its truth has been virtually admitted by his attempt to justify it by similar conduct of other mohunts, and even of the respondent himself. Their guilt, however, cannot prove his innocence. The Court therefore confirm the decision of the principal sudder ameen, and dismiss the appeal, with costs.

THE 14TH MAY 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 82 OF 1843.

Special Appeal from the decision of the Judge of Zillah Hooghly.
RAM KISHWUR GHIOSE AND GOVERDHUN GHOSE,

APPELLANTS,

versus

KISHEN MOHUN CHOUDREE, SEEB NARAIN CHOU-
DREE, SUDANUND CHOUDREE, AND LUKEE NARAIN
CHOUDREE, RESPONDENTS.

THE appellants sued the respondents for 3000 rupees damages, declaring that they purchased, in dur-putnee tenure, two villages mouzas Jykoondah and Jybagh, included in a putnee tenure, named Lot Shamsoondurpoor, pergunnah Burdah, from Goor Purshad Choudree, the putneedar, for the sum of 3235 rupees, at an annual rent of 2160 rupees, and paid up their rent regularly during the life time of Goor Purshad to that person, and afterwards the portion

of 8 annas to Kishen Mohun respondent, his brother, and the other 8 annas to Seeb Narain, Sudanund, and Lukeenarain, his sons, and held possession until 1238 B. E. In 1239, of the rent, he paid to Kishen Mohun rupees 1097-6, and to the others Rs. 1095, in all rupees 2192-6, being the whole of the rent for that year, principal and interest, and obtained receipts, and notes for the same. Notwithstanding, they, the respondents, paid not up their putnee rent. In consequence their whole putnee was sold under Regulation VIII. 1819, and purchased by the zumeendar, there being no bidders. The respondents first re-purchased it fictitiously in the name of a dependant, Ram Needee Koorfee, secondly, in the name of Nubkoomar Choudree, son of Kishen Mohun, and thirdly, in the name of Kishen Mohun himself, and are in possession. That they, appellants, presented a petition to the collector, within two months from the date of the sale, to obtain the price of the dur-putnee, and were desired to sue. They instituted this suit, and the principal sudder ameen, though they clearly established their claim, decided against them, under clause 5, section 17, Regulation VIII. 1819, deeming their petition to the collector of no avail, and disbelieving their declaration of payment of the whole of their rent, because they had not filed all the receipts though given time to have them stamped: and refused to hear more witnesses in evidence. On appeal, the judge confirmed the judgment of the principal sudder ameen on much the same grounds; further intimating that they, the appellants, had been unable to file receipts in full of the rent, although they had filed the remainder of the receipts, being then duly stamped.

The appellants brought this special appeal contending that the clause, section, and regulation, on which their claim had been rejected, were inapplicable to it. That that clause and section had reference solely to cases in which a surplus was in deposit with the collector, and claimed by under tenants. In this there was no surplus, and none claimed. To try this point, the special appeal was admitted.

The respondents, in their answer, deny the payments of the rent asserted by the appellants, disavow the receipts, and deny the authority of the person whose signature they bear to give them, and affirm, by a reference to the plaint, that the appellants sued under the clause, section, and regulation, in question, and cannot now depart therefrom, and that the commissioner refused to allow the receipts to be stamped, and the appellants afterwards got the stamps affixed illegally.

JUDGMENT OF MR. DICK.

I would dismiss the appeal and confirm the decision of the lower courts. The receipts and notes filed by the appellant to prove that he had paid up his rent were originally written on unstamped paper. When he instituted the suit it became requisite to get them stamped

to enable him to file them. For this he applied to the commissioner of the district, the proper legal authority in the matter, who refused to allow them to be stamped. They could not therefore be filed, and the suit was dismissed by the principal sudder ameen. While pending in appeal before the judge, the plaintiffs got the receipts stamped by the authorities in Calcutta, appointed under perfectly another act! This in my opinion was illegal. The commissioner of the district was the only authority who could grant permission to stamp them, his order was final, and therefore the stamp impressed in Calcutta was not the prescribed stamp according to law. But a construction of the Sudder Court had ruled, that such is a prescribed stamp, and therefore the documents have been admitted. I think however that the intent and object of the Legislature, in passing the stamp laws, has thus been defeated two-fold, first, by rendering the stamps as a source of revenue inoperative, as no one will use stamps in the first instance if he knows he can, when requisite, obtain the object by paying a trifling fine. I cannot but think that the Legislature, in allowing stamps to be subsequently impressed on deeds, contemplated merely instances of unavoidable omission, and not wilful disregard of the law, and never imagined that officers of the same grade would take upon themselves to take cognizance of matters in the jurisdiction of their compeers in authority. Secondly, a very valuable assistant to the due administration of justice, in a country where honesty and truth are disregarded, and forgery and perjury are rife, has been rendered utterly inefficient and nugatory. The receipts therefore come before the Court doubtful, or at least not so creditworthy as they ought, and would have been, had they been originally written on stamp paper; inasmuch as it is very difficult to procure stamp paper for fabrication of deeds of the exact value, and purchased before deeds of times long past. They are proved besides by witnesses, who had nothing to do with the mehal in question, while there were gomashtahs and paiks especially employed in the collections and disbursements of the rents of the estate, and who would naturally have been the persons through whom the payments would have been made, whereas not one single instalment was paid through any of these persons, nor has any one of them been brought to testify to those alleged facts. On the other hand the defendant, Kishen Mohun, has filed chelans, and his account books, and produced witnesses to prove them, at least equally credible with those of appellants. I do not see any evidence that proves the putnee was sold purposely to defraud the appellants. It was sold for a very large balance caused by family squabbles. To the same cause may be attributed, their not suing for the arrears of rent. The law on which appellants claim damages is of a penal nature, and the condition on which the claim is to be allowed is clearly specified, and should be clearly and fully proved. Those who come to the law for aid should shew obedience to the law. This,

in my opinion, the appellants have been unable to do, at all satisfactorily. I therefore cannot concur in giving judgment in their favor.

JUDGMENT OF MESSRS. REID AND GORDON.

The special appeal, in this case was admitted, on the 4th January 1843, by Messrs. Tucker and Reid, to try, whether the failure of a *dur-putnee-dar* to bring his action for damages, for the loss of his tenure, for two months after the date of the sale of the *putnee* tenure, bars the cognizance of his suit. This point has been determined in the negative, by the Court's judgment of the 12th March last, present: Messrs. Reid, Dick and Gordon, in the case of Lukhee Nurayn Chukerbutty and another, appellants, *versus* Busawun Tewarec, respondent. [See page 48 of the Decisions of the Sudder Dewanny Adawlut recorded in English.]

The special appeal having been admitted prior to the 1st May 1843, it is necessary for the Court to go into the merits of the case. The right of the plaintiffs, as *dur-putnee-dars*, to claim compensation for the loss of their tenure, cancelled by the sale of the superior tenure, depends on the question, [see clause 6, section 17, Regulation VIII. 1819,] whether they themselves were in balance, or not.

After a careful consideration of the evidence adduced by the parties, and the circumstances of the case, we are decidedly of opinion, that the plaintiffs are entitled to a decree. It is, in our opinion, clearly proved, that the whole of the rent due by the plaintiffs to the defendants, for the year for the balances of which the *putnee talook* was sold, had been paid up. The plaintiffs have produced receipts (*dakhilehs*) and letters from the defendants, or their *gomashtes*, covering the full amount of rent. These, it is true, were taken on unstamped paper; but this circumstance is by no means fatal to their genuineness. It is notorious that transactions of this nature, between man and man, are almost universally carried on, on unstamped paper, for the sake of avoiding the grievous expense of stamps. It is true, that these receipts could not have been received in a court of justice, without being stamped, but having been subsequently stamped, they are admissible, under the construction of this and the Western Court No. 1161, and being proved, as we think, by unexceptionable evidence, they are valid documents.

We do not see the slightest reason to doubt the evidence of the witnesses brought forward by the plaintiffs, to prove the payment of the money and the grant of the receipts. It is alleged against them, that instead of being the *gomashtes* and *paiks* of the villages of which the rents were paid, they are servants of the Guttal silk factory. When it is considered, that Ram Kishore Ghose, one of the plaintiffs, was an influential officer of that factory, it is not to be wondered at, if he made use of the services of the inferior servants, and those services were freely bestowed. The evidence of the

witnesses given is in an honest, straightforward way, and bears no appearance of their having been tutored. It is a fact worthy of consideration, that no attempt has been made by the defendants, to impugn the validity of the *dakhilehs* by proving the signatures of the persons affixed thereto to be forgeries.

The defendants allege the plaintiffs to be still in balance to them : viz. to Kishen Mohun Chowdry, proprietor of one moiety of the putnee talook, rupees 809-10-1-2, and to Sheeb Nurain Chowdry and his partners, proprietors of the other moiety, rupees 246-12-15-0, making a total of rupees 1056-6-16-2 : but though more than four years have elapsed from the 22d May 1833, the date on which the sale took place, to the 8th September 1837, the date on which this suit was instituted, they do not appear to have taken any steps to realize this large sum. The plea urged by them, in excuse of this neglect, i. e. the existence of family quarrels, will not avail them, as they themselves allege, that the rents of each moiety were collected separately, and might have been sued for separately. If the plaintiffs were so deeply in balance as the defendants allege, the latter would hardly have failed to avail themselves of the summary process authorized by the regulations for the recovery of arrears of rent.

It must be borne in mind, that the plaintiffs have all along asserted, that they had paid up their full rent, and as an indication of their confidence of the goodness of their claim, they did, within two months from the date of the sale, petition the collector to hold in deposit any surplus proceeds of the sale, to enable them to sue for damages, or return of their purchase money, and were, by the collector's order of the 11th July 1833, there being no surplus assets in deposit, referred to a regular suit.

The mode in which the putnee talook was sold, and at last reverted to the possession of the defendant, Kishen Mohun Chowdry, leads to a suspicion, that the sale took place under circumstances not exonerating the defendants. It is impossible to say, whether the sale was brought about by the proprietors as a body, to get rid of the holders of the under tenures, or caused by the disputes among the proprietors themselves. In neither case can they be relieved from responsibility. Under the former supposition, their ill faith would entitle the plaintiffs to compensation : if the latter supposition be correct, they cannot plead their disputes against the claim of the plaintiffs, who have been injured by their neglect of their own interests.

Under these circumstances, we are of opinion, the plaintiffs were not in balance, when the putnee talook was sold ; and, having reason to fear, that the destruction of the rights of under-tenants, by the sale of the superior tenure, is very common, we think the plaintiffs entitled to compensation for the loss sustained by them, and that, with reference to the sum paid by them by way of purchase money, on obtaining their talook, they should be allowed the sum claimed by them, viz. three thousand rupees, with interest from the 30th

April 1839, the date of the principal sudder ameen's decree to the date of payment.

We therefore reverse the decisions of the principal sudder ameen and judge ; and decree in favor of the respondents, the sum of 3000 rupees, with interest from the date of the principal sudder ameen's decree with costs in all the courts.

THE 14TH MAY 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 252 OF 1843.

*Regular Appeal from the decision of Hurreenarain Rai, Principal
Sudder Ameen of the 24-Pergunnahs.*

MR. HENRY ADAMS, APPELLANT,

versus

THE COMMISSIONER OF THE SOONDERBUNS, RAJ-
NURAIN BOSE, &c., RESPONDENTS.

THE appellant states, that a grant of land in the Soonderbuns, was given to Mr. Davis, on the 1st November 1830, by the commissioner of the Sunderbuns, with the sanction of Government. The grant consisted of 4,300 beegahs, and forms lot 45 of Mr. Hodges' map, and lot 43 of the map prepared by Mr. Madge, under the orders and superintendence of the commissioner of the Sunderbuns. That owing to the opposition of Rajnurain Bose, and others, Mr. Davis could not obtain possession of the whole of his grant; but, applying to the commissioner of the Sunderbuns, he obtained full possession through that officer's nazir, and granted an acknowledgment to that effect, on the 18th July 1831. That in the year 1834, the Boses abovementioned, on the pretext, that they had obtained a settlement from the commissioner of the Sunderbuns, of

the same, dispossessed Mr. Davis of 2298 beegahs, and upwards, of the land forming his grant. In May 1839, Mr. Davis sold his grant to Messrs. Smith and Hodges, and these, again, their rights in the same, to the appellant. The right of possession was declared by the criminal courts to be in the appellant, and those from whom he held; but owing to a communication from the commissioner of revenue to the collector, dated the 20th January 1840, and by the latter made known to the magistrate, that officer did not put the appellant in possession. The purport of the commissioner's letter was, that a parcel of land included in Mr. Davis' grant, had been settled through oversight with the Boses; and as this settlement had obtained the sanction of Government, the Boses could not be summarily ousted. The present suit was accordingly instituted on the 15th June 1841, in the zilla court of the 24-Pergunnahs to recover possession of the above land, with mesne profits.

The Government pleader admitted in answer, that the facts, as set forth in the plaint, were true; and that the Boses had through fraud obtained a settlement of the disputed land. That the revenue authorities had made every effort in their power to induce the Boses to give up the land, but without success.

The Boses answered in substance thus, that the plaintiff had no right to the land claimed by him, and that he had never cultivated it, nor cleared the jungle. That Rajchunder Huldar and others, certain zameendars, had executed in favor of Kasheenath Mookerjee, in 1824, an hereditary lease, and at a fixed rent, of the lands in dispute, (including others,) and that they (the Boses) had purchased the said lands from Kasheenath, by three successive purchases in 1828, 1829, and 1830. That the commissioner of the Soonderbuns, not considering the land in question to be included in any zameendaree, had it measured and mapped as land belonging to Government, and on the 15th September 1834, disallowing the objections of Rajbullub Rai and others, resumed the land and settled it with the defendants. That as Mr. Davis made no objection, the plaintiff, as representing him, could have no claim. That the plaintiff's claim is barred by the rule of limitation.

On the 3d November 1843, the principal sudder ameen decided, that the right of proprietorship lay in the plaintiff, as the lease or grant, on which he founded his claim, was long anterior to the settlement concluded with the defendants. With reference, however, to the length of time, that the latter had been in possession, he considered, that if they agreed to settle with the plaintiff, as his under tenants, within six months from the date of the decree, they should be allowed to do so, paying rent, at the rate of the class of tenants, called durabadkars, in the neighbourhood. He refused to award mesne profits, because of the large expense incurred by the defendants in cultivating the lands. He saddled the defendants with costs.

With this decision, both parties were dissatisfied, and appealed to this Court.

JUDGMENT OF MESSRS. REID AND GORDON.

This case comprises the following points—1st. Is the suit barred by the rule of limitation? 2d. Supposing the grant or lease to Mr. Davis, to be a genuine one, can it be set aside, either by rights alleged by the respondents, to have been held by them in the disputed lands, and acquired before the date of Mr. Davis's grant, or by a settlement entered into with them, by the revenue authorities, subsequently to the date of the said grant to Mr. Davis? With respect to the first point, if the granting of the lease to Mr. Davis be looked upon as tantamount to the giving of possession (and we so regard it,) then the suit is not barred, even if the time be reckoned from the date of the lease to that of the institution of the suit. It appears, farther, that immediately after the grant was made to Mr. Davis, he reported to the commissioner of the Soonderbuns, and on two occasions, the difficulty he met with in getting complete possession owing to the resistance of the respondent's ancestor. In consequence of these representations, the commissioner's nazir (sheriff) was deputed to put Mr. Davis in possession; and there is the nazir's report, and Mr. Davis's receipt, to the effect that he had got full possession on the 18th July 1831. There cannot be any doubt, therefore, that as far as the rule of limitation is concerned, the appellant's suit is tenable.

With respect to the 2d point, it is not disputed, that the grant was made to Mr. Davis, and that the lands claimed, are included in that grant. This has been clearly ascertained by a local inquiry. Under these circumstances, we conceive, that a claim to the lands by the respondents, founded on a title, dated prior to the grant to Mr. Davis, can be upheld, only on the supposition either that the respondents can prove, that the lands are not within the Soonderbuns, but are part of a permanently settled estate; or being within the Soonderbuns, that when the lands were surveyed, under the superintendence of the commissioner, the respondents claimed a settlement of the same, as having been cleared by them. Touching the first alternative, it cannot be listened to, not only as no proof of such an allegation is forthcoming, but because the respondents ultimately got a lease of the lands, as lands within the Soonderbuns, and therefore the absolute property of the state. As to the second alternative, the respondents made no claim at the time of the survey, to the commissioner, as required under clause 2, section 13, Regulation III. of 1828. They cannot now be allowed to plead ignorance of the survey, never having taken that ground, either in the zillah court, or in their appeal to this Court. It is to be presumed, that the usual forms were gone through at the time of the survey, though the proceeding of the commissioner required to be published

on the spot, is not now forthcoming. The proceeding alluded to, is the publication on the spot of the demarcation of each grant surveyed. It is not surprising, that the proceeding should not be forthcoming, and to disallow a grant for such a reason, would we fear have the effect of cancelling half the Soonderbun grants. The Government, vakeel has filed a report by the commissioner of the Soonderbuns to the Sudder Board of Revenue dated the 25th July 1829, in which it is distinctly stated, that the survey of that part of the Soonderbuns, in which Mr. Davis's grant is included, had been completed. It is in our opinion, in the highest degree improbable, that the respondent's ancestor had cleared the disputed land, when the survey of what forms Mr. Davis's grant was made, for had this been so, the surveyor could scarcely have failed to notice the fact of so large a slice of cultivated land being within the boundaries of what was surveyed as *jungle* land; and admitting that *he* failed to notice so extraordinary a fact, the respondent's ancestor could not have failed to do so. Ignorance of the survey of uncultivated and jungle land is possible, but ignorance of the survey of cultivated land, cannot be presumed. In support of the opinion we have just expressed, we would quote the following passage of an application to the commissioner, by Mr. Davis, dated the 6th June 1831. The lands referred to, are the lands in dispute. "The sircar of a man named Nurain Bose, or Nurainchurn Bose, has been employed since last December in clearing this spot, and has resisted, with a large body of men, armed with spears, and clubs, every effort of my sircar to take possession." We see no reason to doubt the truth of this assertion, which was easily capable of disproof at the time, if false, and it shews, that the disputed land could not have been cleared, when the survey of Mr. Davis's grant was made. Farther, we cannot but think, from the alleged attempt to get possession of the disputed lands, as described by Mr. Davis, and the formal giving of possession to that person, by the commissioner's officer, that the respondent's ancestor must have known, that Mr. Davis claimed the land, as a part of his grant. Yet, neither at that time, nor afterwards, when the settlement of the disputed land was given to the respondents, was there the slightest allusion made by them to the above fact. That Mr. Davis got possession of the disputed lands, agreeably to the commissioner's order, we cannot doubt, for if he had not, why should he not have complained again, as he did before? We think it probable, that the respondent's ancestor desisted from any farther interference at that time, and Mr. Davis having neglected his grant, in consequence of the great inundation which took place soon after, the respondents contrived to get a settlement of the disputed lands. Holding, then, that the respondents cannot establish any right to the disputed lands, by reason of any title they set up, dating prior to Mr. Davis's grant, it only remains to be considered, whether a

settlement entered into with them for land included in Mr. Davis's grant, and subsequently to the date of that grant, can be allowed to interfere with the rights of the grantee, or the appellant, who stands in his place? We are of opinion, that it cannot. The revenue authorities have confessed error, throughout, as founded on oversight, and the alleged fraud of the respondents. We must say, that the circumstances of the case, and the mode in which the settlement was obtained, give rise to a strong suspicion of unfair dealing on the part of the respondents. It is remarkable, that they claim the land, under a decision of resumption, by the commissioner of the Soonderbuns, dated the 15th of September 1834. In looking into this alleged decision, we find, that it is not a resumption decree. It is a settlement proceeding. Allusion is made in it, to proceedings of resumption, and to objections made by other parties, as claiming the lands now under dispute, in opposition to the respondents. These last, have not filed the resumption decree, nor the petitions of objections, nor are those documents to be found in the records of the commissioner of the Soonderbuns. We cannot but strongly suspect, therefore, that no resumption decree was ever regularly passed, and that the document filed in court, must have been obtained by the respondents, in collusion with the commissioner's omulah.

Being of opinion, then, for the reasons herein set forth, that the appellant has a valid claim to the disputed lands included in the grant of Mr. Davis, and that the possession of the lands by the respondents is wrongful, we decree possession to the appellant, reversing the decision of the principal sudder ameen. On the subject of mesne profits, as it appears from the proceedings, that the original grantee and those who first succeeded to his title, neglected their interests, we think the ends of justice will be sufficiently secured, by awarding mesne profits to the appellant, from the date, on which the respondents refused to give up the usurped lands, when invited to do so by the revenue authorities. The amount of mesne profits to be ascertained by a local inquiry. The costs of both courts to be paid by the respondents.

JUDGMENT OF MR. A. DICK.

It is in evidence, indubitable from a decision of the magistrate, under Regulation XV. 1824, given in 1827, and from the deeds of purchase filed by respondents having been registered in 1828, that the respondents' ancestor had a claim to the lands in question by purchase, clearance, and possession, previous to the grant to Mr. Davis.

It appears, that no local inquiry took place, nor was any notice published on the spot, as required by clause 2, Section 13, Regulation III. 1828, at the time of fixing the boundary of the Soonderbuns and giving the grant to Mr. Davis, therefore the non-appearance

of the respondent's ancestor as a claimant, is fully accounted for. After the closest inquiry on the point, no proof of the investigation on the spot, or of the proclamation, could I obtain: and as the respondents have beyond a doubt proved their purchase and possession on the property long before the grant to Mr. Davis, it is morally impossible, that the investigation and proclamation should have been made on the spot, and the respondent's family remain silent!

It is certainly apparent from documents filed, that Mr. Davis did, in 1831, complain of molestation from the respondent's family, in taking possession of his grant, and applied to be put into possession, and was put into possession by the nazir of the commissioner, and filed a receipt for the same; but as he was not, most assuredly, in possession when the investigation on the spot was instituted three years afterwards, and a notice for claimants to appear duly published, and when several claimants did appear, and he not, it looks very presumptive, that the possession he obtained through the nazir was merely *nominal*. Had he been dispossessed in the interval, he would certainly have again applied to the commissioner, and further, had he been *bonâ fide* put into actual possession, it is strange that the party who had opposed him, never objected to the commissioner.

A full and regular inquiry was made into the respective rights of several claimants to the land in 1834, and the ancestor of respondents was finally adjudged to have been in possession, and to have cleared, and brought the land into cultivation, and a settlement therefore was made with him, and he and his family remained in undisturbed possession until 1839, and here it must be observed that at the request of a Mr. Pingelli, a proclamation was issued on the spot in consequence of its appearing that Mr. Davis had not cultivated according to conditions, calling upon claimants, when the respondents did appear and preferred their claims. Mr. Davis made no appearance, when purchasers from Mr. Davis of his grant suddenly came forward and laid claim to possession!

From the inquiry, on the spot, of Mr. Campbell, the deputy collector, it appears clearly, that the lands in dispute were brought into cultivation by the respondents' ancestor and family, and that they had been in possession for years, and that Mr. Davis had merely cleared and cultivated a small portion of his grant to the south of the land in question, and even that he had relinquished after the inundation of 1833, and this, be it observed, accounts for his non-appearance as a claimant during the local investigation in 1834. Thus then, it is apparent that when the grant was made to Mr. Davis and the boundary of the Soonderbuns determined, the prescribed local investigation was not made, and notice published on the spot, and consequently the ancestor of respondent, though a claimant and in possession, was not in fault in not coming forward. Nay, he has shewn further, that on every occasion when any local

inquiry was made, or proclamation published on the spot, he invariably preferred his claim and evinced his possession; that Mr. Davis, if he ever was really in possession, voluntarily relinquished it for years; that in the mean time it had been brought into complete cultivation by the respondents' family, and after full inquiry a legal settlement had been entered into with them by Government for the lands, unopposed and unobjected to by Mr. Davis for years, and that it was indubitably his own fault, that the settlement was made with the respondents' family without advertence to the grant previously given to him, which in fact he had virtually forfeited, and actually relinquished for years, before he sold it. Therefore, his claim would be good in neither law nor equity; and in like manner are all claims derived from him.

THE 14TH MAY, 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 502.

IN the matter of the petition of Mirza Ameer Beg, and others, filed in this Court, on the 6th July, 1844, praying for the admission of a special appeal from the decision of the judge of Patna, under date the 11th March 1844, reversing that of the principal sudder ameen of Patna, under date 16th May 1843, in the case of Mirza Ameer Beg, and others, plaintiffs, *versus* Gour Dyal Sing, and others, defendants, it is hereby certified that the said application is granted on the following grounds:

Plaintiffs claim to reverse a settlement made by the revenue authorities with the defendants under Regulation VII. of 1822, for certain lands being in village Hunsapore, pergunnah Sandeh, which they held under an aymeh tenure, and were resumed by Government. They also sue for possession of the same and mesne profits thereon.

Defendants pleaded that their proprietary and permanent rights, having been acknowledged by the revenue authorities, plaintiffs cannot now sue for reversal of the settlement made with them.

The principal sudder ameen, on the 16th May 1843, records that the Sudder Board of Revenue never acknowledged the proprietary (milkecut) and permanent (mokurruree) rights of the defendants; but only sanctioned a settlement with them, on the grounds of certain decrees and simple mortgages which they held, and, under a decree of court, dated 13th July 1785, dividing the village Hunsapore, into 5 shares, enquired which of the shares had been pledged to defendants, decreed possession of two shares

being 6 annas 8 dams to the heirs of Rahum Allee and Khajeh Mahomed Allee on their paying the sum of 1,300 Sicca rupees, due to defendants, under two deeds, dated 1st Assin 1212 Fuslee, and 8th Ramzan 1233 Higiree; giving immediate possession to the other plaintiffs, with permission to apply to the collector to make settlement with them.

An appeal was on this preferred to the judge, who, on the 11th March 1844, rejected the appeal, being of opinion that the provisions of Regulation VII. of 1822, barred his interference.

The principle on which the judge disposed of this case is opposed to the law quoted. The object of the plaintiffs is clearly to obtain reversal of the settlement officer's order, under which an engagement was made with the defendants by the revenue authority, to the detriment of the plaintiffs, who claim a priority of right of settlement, and urge preference should have been given to them. This point is manifestly open to the consideration of the civil courts, and it is incumbent on the judge to decide on it.

ORDERED,

That the case be entered on the Court's file, and returned to the judge for an investigation of its merits.

THE 15TH MAY 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 177 OF 1835.

Regular Appeal from the Judge of Zillah Purneah.

GOPAL SING, FOR SELF AND AS GUARDIAN OF KEERUT SING, MINOR SON OF JOWAHIR SING, MOHINDER NARAIN RAY, AND RAJ INDER NARAIN RAY, SONS OF RAJAH SREENARAIN RAY, (DEFENDANTS,) APPELLANTS,

versus

RAJAH BEEJYE GOVIND SING, (PLAINTIFF,) RESPONDENT.

PLAINTIFF, on the 3d August 1833, or 20th Srabon 1840 B. S., instituted this action for possession of a moiety of talook Bhooga-

blutgaon, and reversal of a mookurruee pottah, dated 4th May 1804, given by rajah Sreenarain Ray to Jowahir Sing and Gopal Sing, on the ground that a solehnameh having been executed in 1805 A. D., by which the parties were declared entitled to half shares, Sreenarain had no authority to grant a pottah of the entire talook. He subsequently put in a supplementary plaint for mesne profits from 1212 to 1240 moolkee, with interest to the same amount, being 8,40,971 rupees, and estimating the value of the property in litigation at 61,500 rupees, sued the defendants for 902,471 rupees. The guardian of Keerut Sing, son of Jowahir Sing, Gopaul Sing, for the minor and himself, in answer, stated, the case between plaintiff's father, Bhya Jah, and Sreenarain Ray and Lullitt Narain Ray, was disposed of in July 1812, in the Sudder Dewanny Adawlut,—the decision of the Court being founded on the deed of adjustment executed by the parties in 1803 December 11th,—and the parties were put in possession of half shares respectively of the real and personal property of rance Indrawuttee. In execution of the decree, on the 29th October 1812, both parties collected on their shares up to 29th July 1813, after which, in consequence of disputes, Sook Lal, a manager, was appointed and plaintiff's father received profits of his half share. In 1223 moolkee, Bhya Jah, plaintiff's father, died, and his guardians, under order of the Sudder Dewanny Adawlut, dated 24th August 1816, held the half share of the property now in litigation under security duly furnished (Sreenarain Ray having preferred an appeal to England against the Sudder Court's decision of 1812, above referred to) having got possession of their half share of the zemindaree on the 20th November 1817 or 7th Aghon 1223 B. S. The guardians, defendant states, upheld his permanent mokurruee pottah. The mesne profits taken by Sreenarain Ray up to 1215 moolkee, were under orders of the Sudder Dewanny Adawlut, of the years 1819 and 1820 A. D., made over to plaintiff's guardians under security, and the profits were also given to plaintiff on his attaining his majority.

Rajah Raj Inder Narain Ray, in answer, states plaintiff's father upheld Jowahir Sing's pottah, and pleads the statute of limitations in bar to this action.

Mr. H. Nisbet, judge of Purneah, on the 28th February 1835, cancelled the mokurruee pottah and decreed possession with mesne profits from date of institution of suit* by plaintiff's father for the estate of rance Indrawuttee to date of execution of his judgment in favor of plaintiff.

In appeal to the Sudder Dewanny Adawlut admitted in 1835, Mr. J. R. Hutchinson, a Judge of the Court, on the 20th June 1837, upheld so much of the judge's decision as cancelled the pottah

* For report of this case vide page 23, volume 2d, Sudder Dewanny Reports, decided 27th July, 1812.

and decreed possession; but disallowed the claim of wasilat (mesne profits) awarded in the lower court for the three following reasons:

1st. Plaintiff's father, on the 29th October 1812, got possession of his half share of the zemindaree with mesne profits during the period Sreenarain Ray had been in possession of it, and gave in his receipt to that effect into court, and never objected to the mokurruree pottah having been given on a reduced jumma, or applied for mesne profits as per gross produce when the amount was fixed.

2d. Plaintiff's father, during the time he held, took rents from Jowahir Sing according to his pottah, and received mesne profits for the period the estate was under management of surbarakars, at the same rate, and moreover never objected to them, neither did the surbarakars ever demand increased rents.

3d. Plaintiff sues for mesne profits from 1212, bringing his suit on the 20th Sraon 1240. He has produced no proof of the amount demanded, the quinquennial papers not being verified are not sufficient, and to fix the amount of mesne profits with reference to the average of three past years would not be just. To fix the amount of 17 years' produce at the present date would be difficult, and as years have passed since the decree was passed in favor of the respondent, plaintiff, and since he got possession under it, and his father received mesne profits as per pottah, which is, so to say, an upholding of the pottah by his father, the plaintiff's suit now to upset is weak, and his claim for mesne profits is still weaker, and cannot be upheld. The judge's orders, in this particular, must be reversed.

Mr. Hutchinson concludes by decreeing possession and reversal of the pottah, and sends the case on to another judge to amend the judge's award of wasilat.

The case came on for hearing before Mr. W. Braddon, on the 3d August 1837, who concurred with Mr. Hutchinson in the judgment above recorded.

An application for review of judgment was, on the 4th November 1837, made to Mr. Braddon, who, on 14th August 1839, seeing no grounds for its admission, rejected it, and in consequence of Mr. Hutchinson's death sent it on for another voice.

The application was then laid before Mr. A. Dick, who, on the 16th January 1840, recorded his opinion for admission of review, on the ground that it would seem that the objections made by plaintiff's father to the amount of mesne profits, at the time of their being estimated and paid in, had escaped Mr. Hutchinson's notice, though on the record, and Mr. Braddon founded his judgment, it appeared, on that of Mr. Hutchinson and the reasons he assigned for his decision.

The case was then heard by Mr. Lee Warner, who, for the reasons recorded in his proceedings of 23d April 1840, rejected the application.

It was subsequently heard by Messrs. D. C. Smyth and J. F. M. Reid, who, on the 11th July 1840, in their joint proceedings, admitted a review of judgment, in order to ascertain from what date to what date, the wasilat, which they were of opinion should be awarded, ought to be given.

The case was, on the 21st May 1841, and on several subsequent dates, laid before the Court, and reports on certain points indicated required from the mofussil authorities and at length was sent up on the 1st instant, for consideration by a full bench. The hearing of the case was again postponed to the present date.

Mr. Tucker proposes to give wasilat with interest, to plaintiff from date of the institution of this suit, seeing no sufficient grounds for its having been so long delayed.

Messrs. Reid and Barlow are of opinion, that the plaintiff is entitled to wasilat from the 27th July 1812, the date of the Sudder Court's decision in the case Sreenarain Ray and widow of Lullit Narain Ray, appellants, *versus* Bhya Jah, respondent, already referred to.* It appears from an ikrarnamah signed by Bhya Jah in 1813 and given to Mr. Charles Reid, that he made over all his rights to wasilat antecedent to date of the above decree to the said Mr. C. Reid, as compensation for services rendered in the conduct of that suit through the courts, which bars his claim in this action up to that date. It is shewn Bhya Jah, in 1813, objected to the amount wasilat fixed on the talook Bhoogabutgaon in a petition, dated 3d August of that year, and died in October 1815. His estate from that period remained in charge of the Court of Wards and in the hands of surbarakars till 1826. The plaintiff then attained his majority. The whole of rance Indrawuttee's estate still, however, continued under attachment under provisions of section 26, Regulation V. of 1812.

In 1833 plaintiff brought this action for possession of half share of talook Bhoogabhutgaon, for reversal of the permanent pottah given to Jowahir Sing, and for wasilat from 1212 to 1240.

There is, on the face of the record, strong ground for suspicion that the pottah was given by Sreenarain to the farmers, Jowahir Sing and Gopal Sing, in consideration of their having stood security (as did their father, Bahador Sing, before them) for Sreenarain when put in possession of rance Indrawuttee's disputed estate after her death. It makes over, in 1804, on a permanent fixed jumma of 12,000 rupees per annum the entire 16 annas of a property of much greater profit, of which Sreenarain well knew he was only a half sharer, under the deed of adjustment executed by both parties, one to the other, the year previous, viz. in 1803. The loss thus sustained by the plaintiff, originated in the act of defendant's father, Sreenarain, and his heirs must be held responsible for it.

* Vide page 23, volume 2, Sudder Dewanny Reports.

After diligent search in the records of the judge and collector, the only papers forthcoming, on which the Court can rely with the view to ascertain and fix the amount of loss per annum sustained, are the quinquennial registers filed in the collectorate; the whole of the records of the surbarakar's office appear by a return to precept of this Court to have been destroyed by fire.

In the quinquennial papers, the sudder jumma apportioned on the disputed talook is 28,225 Sicca rupees 7 annas 15 gundas; the profits of it 9,421 Sicca rupees 12 annas, the gross proceeds being thus 37,677 Sicca rupees 3 annas 15 gundas, a half of which is plaintiff's right, viz. 18,838 Sicca rupees 9 annas 17 gundas 2 cowries. Plaintiff has received per annum 6,000 rupees, his half share of rent from the farmers, which leaves a balance of 12,838 rupees 9 annas 17 gundas 2 cowries, from which a deduction of 10 per cent. costs of collection being made, viz. 1,284 rupees, there remains a net balance of 11,558 rupees per annum recoverable from the heirs of Sreenarain by the plaintiff from the 27th July 1812 to the 18th September 1835, date of possession under judge's order, being 23 years 1 month 22 days, amounting to 267,503 Sicca rupees 7 annas, or 285,337 Company's rupees, which sum they award with interest from the date of the judge of Purneah's decree, the 28th February 1835, to date of realization—disallowing interest antecedent to that date on the ground of the delay, which the plaintiff has made in the institution of his suit.

THE 16TH MAY 1845.

PRESENT:

C. TUCKER,

JUDGE.

CASE No. 218 OF 1840.

*Regular Appeal from the decision of J. Grant, Esq. Judge of Zillah
Dinagapore, dated 29th May, 1840.*

NADIR OON NISSA CHOWDRAIN, WIDOW OF MOONSHEE
HEMAYETOOLAH, (DEFENDANT,) APPELLANT,

versus

PRAN KOONWUR BIRMUNNEE, WIDOW OF DHUN PUT
BABOO, AND MOTHER OF RAM SOONDER BABOO,
NEELMADUB RAE, ANNUND MOY DOSSEE, AND
DIGHUMBUREE DOSSEE, HEIRS OF GOOROOPERSHAD
RAE, (PLAINTIFFS,) RESPONDENTS.

THIS suit was instituted on the 18th September, 1839; and the
plaint sets forth, that Dhun Put Baboo, Goorooopershad Rae, and

Hemayet-oolah were joint proprietors of Bhamun Koonda, &c. &c. fifteen pergunnahs, purchased by them in the Bengal year 1208, at a public sale held for the recovery of arrears of Government revenue.

That in the Bengal year 1210, the said three persons made a division amongst themselves of the property into three equal parts; that

Thoke Khetnal fell to the lot of Dhun Put Baboo,
Thoke Khass talooks ditto ditto of Gooroopershad Rae,
Thoke Bhamun Koonda ditto ditto of Hemayet oollah;

and that the said thokes or divisions have been held in distinct and separate possession by each respectively ever since.

At the time of the division it was mutually agreed between the parties, that in the event of any of the three being dispossessed of any portion of the lands appertaining to their respective divisions, the whole three should sue jointly for the recovery of the same, and each bear an equal share of expenses; but, in the event of obtaining a decree, the lands recovered, with the mesne profits due thereon, shall belong exclusively to the party dispossessed.

That in the year 1225, one Rae Danish Mund dispossessed them of seventeen villages. That a suit for the recovery of the same was instituted in the joint names of the parties, and the expenses defrayed by each, share and share alike.

That a decree was obtained for only eleven villages. These eleven villages appertained to the three thokes, thus:

Thoke Khetnal—mouzahs Nodah—Preeagpoor Gowarah—Bishennathpoor, and $\frac{1}{3}$ d of mouzah Attaparah,	4- $\frac{1}{3}$
Thoke Khass talooks—mouzahs Burrul—Badehburrul Jhael—Tippoorah, and $\frac{1}{3}$ d of mouzah Attaparah,	4- $\frac{1}{3}$
Thoke Bhamun Koonda—mouzahs Hurreenathpoor—Dosadpoorah, and $\frac{1}{3}$ d of mouzah Attaparah,	2- $\frac{1}{3}$

Villages 11

That the mesne profits on these eleven villages paid into court, after deducting the ameen's expenses, amounted to Sicca rupees 7,381-14-2.

That from the ameen's accounts the said sum would be distributable, under the agreement above noticed, as follows:

Thoke Khetnal,.....	Sicca rupees	2938	5	6	2
Thoke Khass talooks,.....		3589	1	13	2
Thoke Bhamun Koondah,.....		853	13	19	3

That this sum was paid by the court to the parties, share and share alike, because the plaint was a joint one, and the decree makes no mention of a division of interests amongst the parties in the mo-fussil. That by this distribution, the proprietors of Thoke Bhamun Koonda have received Sicca rupees 1,606-3 more than their due, of

which Sicca rupees 477-11-6-2 appertains to the proprietors of Thoke Khetnal, and Sicca rupees 1,128-7-13-2 to the proprietors of Thoke Khass talooks.

The present suit was therefore instituted by the proprietors of Thokes Khetnal and Khass talooks against those of Thoke Bhamun Koondah, to recover the said amount with interest thereon from 29th Maugh 1240 B. S. (the day on which the wasilat was paid to the parties by the court) to the date of institution of suit, being Sicca rupees 1,074-8-13, or together Sicca rupees 2,680-11-13, equivalent to Company's rupees 2,859-7.

The case was not defended in the zillah court, and the judge, finding the plaint to be supported in all points, decreed in full for the plaintiffs, on 29th May, 1840.

An appeal having been preferred to the Court of Sudder Dewanny Adawlut, the case came first before Mr. Edward Lee Warner, who recorded his opinion on the 13th December, 1841. Mr. Lee Warner proposed to reverse the decision of the lower court, on the grounds that the original suit made no mention of any distinction of rights and interests among the parties, and that the decree awarded the eleven villages, and the mesne profits due thereon, to the parties jointly, and further that the objection made at the time by the plaintiffs to the distribution of the mesne profits in equal shares having been overruled by the Court, the matter could not now be the subject of a fresh suit.

The case was next heard by Mr. J. F. M. Reid, who recorded his opinion on the 2d March, 1843. Mr. Reid differed from Mr. Lee Warner, and was for affirming the decree of the lower court. He observed that an order passed in execution of a decree affecting the chose to be taken from one party and given to the other party would clearly bar either of the parties bringing an action to contest that point; but not so, when, as in the present instance, the dispute arose amongst the successful party as to the amount of their respective shares of that chose. That the rights of the parties relatively was not the point at issue in the former suit, consequently he was of opinion, the present action would lie, and as the appellant's vakeel, on being questioned had nothing to urge against the correctness of the statement made by the plaintiffs, Mr. Reid affirmed the decree of the lower court, with costs, chargeable to the appellant, and directed the proceedings to be laid before a third judge.

The case came on before me, this day, and observing that the defendants had not appeared in the lower court, I should have dismissed the appeal under the Circular Order of the 12th March, 1841, had not the two judges above mentioned omitted to notice the point, and had I not fully concurred with Mr. Reid on the merits of the case. Had the court, when paying away the mesne profits, entertained the objections of the plaintiffs and overruled them after investigation; then it is my opinion, with reference to Construction No. 1129, dated 9th February, 1838, this action could

not have been maintained; but the Court refused to enter on the question of the relative rights of the parties, observing that the decree made no distinction, and therefore the amount mesne profits must be paid to the parties jointly. The present action was based on a private agreement between the parties, which bound them to sue jointly, should one or more be disturbed in possession, so that the original suit was in strict conformity with this agreement, and if binding in one point, it should be so in all. The appellants do not impugn the correctness of the account given by the respondents; but rest on the plea that the action is not maintainable, the point having been raised in the execution of the original decree and then overruled.

I therefore, concurring in opinion with Mr. Reid, make absolute the order, affirming the decision of the lower court with costs, chargeable to the appellants.

THE 20TH MAY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 170 OF 1844.

Special Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, Munowur Ali Khan, July 20th 1843; modifying one passed by the Moonsiff Sudder Ameen of Arrah, February 24th 1843.

SUMBHOO RAE, (APPELLANT) DEFENDANT,

versus

HUNSRaj SINGH, FOR SELF AND NURAIN SING, MINOR
SON OF ACHIBUR SINGH, DECEASED, (RESPONDENT)
PLAINTIFF.

THIS suit was instituted by respondent and his brother, Achibur Singh, deceased, on the 2d June 1842, to recover from appellant the sum of forty-six rupees and six annas (Company's rupees 46-6) arrears of rent, with interest, for the years 1247, 1248, and 1249 F. on certain lands situated in Bokharapore, as per account rendered by the putwarees of the same, for the time specified.

The moonsiff, who tried the suit in the first instance, deemed the claim to be established for the two latter years of the period for which rent was asserted to be due, and passed a decree for the same, with interest, on 8 beegahs 10 beewas of land, at the rate of 1 rupee 12 annas per beegah, being 33 rupees 14 annas 11 gundahs 4 cowries.

In appeal, the principal sudder ameen adjudged the whole amount claimed (as above stated;) the same being, in his opinion, the just right of plaintiff, for the full period of three years, at the rate of 2 rupees per beegah, as proved by the evidence adduced by him to have been the terms of agreement.

A special appeal was admitted in this Court, on the ground of the question of rent having been already decided by legally appointed arbitrators, and the rate fixed at 1 rupee 12 annas per beegah; which decision having been formally acknowledged by the zillah court, could not be set aside, as in the present instance it had been, by the enhanced rent of 2 rupees per beegah, to which the principal sudder ameen had declared the plaintiff entitled.

It appearing on trial, that the lease, the terms of which had been settled by arbitration at 1 rupee 12 annas per beegah, had expired so long ago as 1237 F.; that a new engagement had been subsequently entered into at the enhanced rate of 2 rupees per beegah; and that arrears had accrued at the latter rate for the time set forth in the plaint; the decree of the principal sudder ameen is affirmed, with costs payable by appellant.

THE 23D MAY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 227 OF 1844.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Patna, Ephraim DaCosta, June 20th, 1844.

GOUR PURSHAD AND SOORIJ PURSHAD, (APPELLANTS,
DEFENDANTS,

versus

RAM GHOLAM, *alias* SOORJOO LAL, (RESPONDENT,
PLAINTIFF.

THIS suit was instituted by respondent on the 31st January 1842, to recover from appellants certain lands, houses, and money, belonging to the estate of Moost. Koula Bibi, deceased, widow of respondent's paternal uncle Kullian Mul; estimated at Company's rupees 26,384-5-4.

The appellants were two of nine defendants; the remaining seven being as follows:

1. Goordial Singh, gomashteh of Kullian Mul and of Moost. Koula Bibi.
2. Govind Purshad, ... }
3. Gowrie Purshad, ... } sons of Goordial Singh.
4. Busheshur Nath, nephew of Goordial Singh.
5. Ajoodhea Purshad, Khetree, occupant of one of the houses claimed by respondent.
6. Ajoodhea Purshad, Kaeet, father of appellants.
7. Muneel Lal, father of respondent (deceased.)

As regards the lands, the only subject of appeal, the plaintiff stated, that they composed the estate of Oojgundeh, which was hereditary, and that consequently, under the Hindoo law, it was not competent to respondent's father, Muneel Lal, to alienate it without his, respondent's, consent and concurrence; that it had belonged to Kullian Mull, respondent's uncle, and after his death had been possessed by his widow, Koula Bibi, on whose demise, Muneel Lal, respondent's father, succeeded as the legal heir; that, after this, Muneel Lal associated Goordial Singh, his gomashteh, with him, as joint proprietor, executing an ikrarnamch by which he, Muneel Lal, was declared proprietor of a ten annas', and Goordial Singh of a six annas' share of the whole; that, having done this, the two united in a disposal of the entire estate to appellants; that, on the usual application to the collector to have the names of the purchasers registered in his office, respondent protested against the transfer; but no attention being paid to this, he instituted the present action.

It was answered, that the property was not hereditary; but had been recently purchased by Goordial Singh from Byjnath Sahoo; that he, Goordial Singh, had transferred a ten annas' share to Muneel Lal; and that they, both, had, subsequently, as they had a right to do, sold the whole estate to appellants.

In the opinion of the principal sudder ameen, respondent had made good the facts of the transaction, as set forth in the plaintiff, and had proved the estate to be ancestral property, hereditary in his family; that, under the circumstances of the case, he was legally competent to institute the action in the life-time of his father, since deceased; and that the alienation by the latter was, both by law and precedent, illegal. He accordingly passed judgment in favor of respondent.

Concurring with the principal sudder ameen as to the facts, and the estate being in that part of the country in which the current shasters are prohibitory of the alienation of ancestral property by a Hindoo father, without the consent of his son as heir to such property, the Court affirm the decree appealed against, with costs payable by appellants.

THE 28TH MAY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 183 OF 1844.

*Regular Appeal passed by the Principal Sudder Amcen of Patna,
Ephraim DaCosta, March 21st, 1844.*

OODYE KURN SINGH, APPELLANT, (DEFENDANT,)

versus

RAM SURN SINGH, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent on the 28th May 1842, to recover from appellant and Oodit Nurain Singh [who does not appeal] half of mouzah Moostufapoor-Chupoor, in pergunnah Bulleah, valued at Sicca rupees 4,500, with wasilat, or mesne profits, for 1248 and 1249 F. amounting to Sicca rupees 1,080: together, Sicca rupees 5,580, or Company's rupees 5,952.

A bybilwufa, or deed of mortgage and conditional sale, bearing date the 28th Cheyt 1241 F., corresponding with the 22d April 1834, had been executed by Oodit Nurain in favor of respondent, the purport of which was, that he, Oodit Nurain, had borrowed from respondent 4,500 Sicca rupees, and had mortgaged, and conditionally sold to the latter, an eight annas' share of the estate of Moostufapoor-Chupoor, the condition being, that if the said sum was not repaid between the years 1242 and 1246 F. the lands were to be considered as sold and the property of respondent, if repaid, the deed to be cancelled and of no effect.

At the close of 1246 F. no portion of the debt had been liquidated.

On the 19th September 1840 (1247 F.) the lands were brought to sale in satisfaction of a decree held by one Wajid Hosein against Oodit Nurain. Respondent had urged his lien on them as a ground of protest against the sale, but without effect: they were sold, and purchased for 175 rupees, by appellant, Oodye Kurn Singh—which Oodye Kurn Singh was the father of Oodit Nurain's wife. On a petition being presented by respondent, however, before the sale was finally confirmed by the commissioner, that officer made the confirmation conditional on the payment by the purchaser, not only of the purchase money, but of the 4,500 rupees for which the lands had been pledged, with interest. This was with reference to the

recorded fact of respondent's lien on the property having been explained to and acknowledged by appellant at the time of purchase.

Up to the date of the decision of the principal sudder ameen no part of the purchase money or debt having been paid in, a decree was passed in favor of respondent; which decree is hereby affirmed, with costs payable by appellant.

THE 28TH MAY 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 102 OF 1844.

Regular Appeal from the decision of Mohumud Rookunnuldeen Khan, Principal Sudder Ameen of Purneah.

MIRZA MOHUMUD HUSSUN AND MIRZA ABOOL
HUSSUN, APPELLANTS,

versus

MR. ALEXANDER JOHN FORBES, RESPONDENT.

THE respondent states, that Shah Allee Rizah leased certain villages, Sundoolpoor, and others, to Lala Gendalal, in the names of Fakeerchund and Munnoolal, from the year 1245 to the end of 1249 Moolky era: that Gendalal and Munnoolal dying in Bhadoon 1247, Shah Allee took the said villages under his own management, and in the month of Phagoon following, included them with other lands in pergunnahs Huvaylee and Dhurmpoor, and granted a lease of the same to the respondent, from the year 1247 to 1253 Moolky, at an annual rent of Company's rupees 7,291: that Fakeerchund and Kallee Suhai, the former on the ground of being the leaseholder, and the latter as being heir to Gendalal, dispossessed the respondent, taking into partnership with them, and gaining the assistance of, the appellants, Mirza Mohumud Hussun and Mirza

Abool Hussun: that the respondent applied to the criminal court to recover possession, but without success: that the respondent at the expiration of Gendalal's lease in 1249, got possession of the disputed lands, and made some collections, from some ryots, when he was dispossessed by the appellant, Mirza Mohumud Hussun, who asserted that he had obtained a lease of the disputed lands, in the name of Mirza Abool Hussun, from Shah Allee Rizah: that the respondent, accordingly, instituted the present suit in the zillah court of Purneah, on the 15th December 1842, to recover possession of the disputed lands, laying his action, inclusive of mesne profits, at rupees 19,158-2-10½.

Mirza Mohumud Hussun answered, that up to the end of the year 1249, he had no concern with the lands in question, but as the attorney of the former farmer, Fukeerchund; and that from the year 1250, he was in possession of the disputed lands, on a lease for 4 years, granted by the proprietor, Shah Allee Rizah.

Mirza Abool Hussun denied all liability. He had not been a party to the suit for possession in the criminal court, and the plaintiff himself admits, that the real lease-holder, whose lease he now sues to set aside, is Mirza Mohumud Hussun.

Kalee Suhai, in like manner, denied all liability. The magistrate had given possession to Fukeerchund, and this defendant's father-in-law, Gendalal, had only been surety.

Fukeerchund, in substance, alleged, that he was the farmer, and that until his lease transpired in 1249, the plaintiff had no right to the disputed lands.

Shah Allee Rizah denied, that he had granted the lease, on which the plaintiff had founded his claim, and supported the statement made by Fukeerchund.

On the 28th December 1843, the principal sudder ameen decreed for the plaintiff, with costs, being of opinion, for the reasons stated in his decree, that the lease had been granted to the plaintiff as stated by him: that Fukeerchund was a mere man of straw: that he and the others, as mentioned in the plaint, had dispossessed the plaintiff in the month of Bysack 1248: and that Mirza Mohumud Hussun and Mirza Abool Hussun had no right to take a lease in 1250, during the currency of the plaintiff's lease. With respect to mesne profits, the principal sudder ameen decreed, that for 1247, they should be calculated on the papers forthcoming, deduction being made for what was collected in that year, by the plaintiff and by Shah Allee Rizah; and that for subsequent years, they should be ascertained by an ameen. Farther, that the mesne profits from 1247 to 1249, should be payable in the first instance, by Mirza Mohumud Hussun, Fukeerchund and Kalee Suhai, and that if the whole cannot be got from them, the remainder should be realizable from Shah Allee Rizah. That the mesne profits from 1250, be payable in the first instance, by Mirza Mohumud Hussun, and

Mirza Abool Hussun, and if the whole cannot be got from them, the remainder should be payable by Shah Allee Rizah.

The following are the points for consideration in this case. 1st. Was the lease, on which the respondent founds his claim, really granted to him? 2d. In the lease, which is alleged to have been granted to Gendalal, from 1245 to 1249, was Gendalal the real farmer, and was this lease legally in abeyance, at the time Shah Allee Rizah is alleged to have granted the lease to the respondent? 3d. If the questions under the second point for consideration, can be answered in the affirmative, who is to be held liable for the respondent's want of possession of his lease up to the end of 1249? 4th. Has the respondent a claim to receive possession of the disputed lands, up to the end of 1253, and who is to be held responsible for his losses up to the time of his getting possession?

With respect to the first point, there is not any reason to doubt the truth of the respondent's statement. A deed of lease was duly executed by Shah Allee Rizah, and rent was paid to him by the respondent, according to the terms of that lease. Though Shah Allee Rizah denies the granting of this lease, his denial is fraudulent, and contrary to his own admission, when the case was pending in the criminal court. With respect to the second point, we think there is every reason to believe, that Gendalal was the real farmer, for he is admitted to have been so, in a receipt for rent filed by Fukeerchund; and at all events, as a notice seems to have been served on Fukeerchund, by Allee Rizah, on the death of Gendalal, to furnish fresh security, and he did not do so, we think Allee Rizah could legally give the lease to the respondent from the commencement of 1248, but not before, as a considerable part of the rent of the former lease for the year 1247, appears to have been paid by Gendalal. With respect to the third point, we are of opinion, that for the year 1247, the respondent is entitled to a refund from Allee Rizah of the rent paid to him, with interest; and that for the years 1248 and 1249, he is entitled to receive the gross rents, less 10 per cent. for collections, from Fukeerchund, Mirza Abdool Hussun, Heera Lal, Jai Chund, Bhuttum Lal, and Bhoondoolal, it being proved, that these persons combined to share the rents of the disputed lands, and to keep the respondent out of possession. With respect to the fourth point, the respondent has a right to be put in possession, and to hold possession, under the lease granted to him by Allee Rizah, to the close of 1253. Up to the time of his getting possession, the respondent is entitled to receive the value of the gross produce of the villages, less 10 per cent. for expenses of collection, from Allee Rizah, this latter having no right to transfer to another, what belonged to respondent. We accordingly decree, as herein stated, against Allee Rizah, Fukeerchund, Mirza Abool Hussun, Heera Lal, Jai Chund, Bhuttum Lal, and

Bhoondoolal, with costs against the same parties, in proportion to the amount, which, on a local inquiry, shall be found to be payable by each. With respect to Mirza Mohumud Hussun, as he has not been found liable in any way, his costs must be paid by the respondent.

THE 29TH MAY 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 32 OF 1844.

JOACHIM GREGORE NICHOLAS POGOSE, BY HIS GUARDIANS PETROOS NICHOLAS POGOSE AND BEEBEE CATHARINE; RUTTUN KISHEN MOJMOODAR, GUARDIAN OF MEER BABA, MINOR SON OF SYED ASHRUFF ALLEE; AND THE RECEIVER OF THE SUPREME COURT, APPELLANTS, (DEFENDANTS,)

versus

BUNNEE BEYGUM, DAUGHTER OF MEER AMANOLLAH,
RESPONDENT (PLAINTIFF.)

THIS suit was instituted by the plaintiff, on the 31st December 1835, or 17th Poos 1242, for possession of five gundas share, the right of Ameena Beygum, alleged to be plaintiff's own sister, both of them daughters by Lotecfa, one of Meer Amanollah's wives. Amanollah was proprietor of six annas of Tuppa Sultanabad, whose estate on his death was divided according to the Mahomedan law, by which the five gundas in litigation fell to Ameena's share. Ameena died in 1227 B. S., on which plaintiff held her own and her deceased sister's share. In 1228 Ashruff Allee, one of Amanollah's sons, gave the plaintiff's share 5 gundas, as well as Ameenah's share 5 gundas as above, and his own share 13 gundas 1 cowry 1 krant in farm to Byjenath Mojmoadar in his own name and that of the plaintiff. On plaintiff's attaining her

majority, she was about to take possession of her 10 gundas share, when Ashruff Allee wrote to the farmer to pay the profits of that share to her, plaintiff; which he did as long as he held the farm. On application by Nicholas Marcar Pogose for foreclosure of mortgage made by Ashruff Allee of 18 gundas 1 cowry 1 krant, the share above referred to, plaintiff protested. On suit, however, brought by Nicholas Marcar Pogose against Ashruff Allee for possession, a decree was given on the 21st July 1831, by the judge in his favor, with authority to plaintiff to sue for her share. She appealed to the Sudder Dewanny Adawlut, and the judge's order was upheld by that Court on the 24th December 1834. Plaintiff states she is still in possession; but in consequence of the last mentioned decree is compelled to bring this action to establish her right to her deceased sister Ameena's 5 gundas share.

Petroos Nicholas Pogose, on behalf of Joachim Gregore, minor, answered as follows:—plaintiff has neither right nor possession of the 5 gundahs she sues for. Ameena was not her, plaintiff's own sister—and her share fell to Ashruff Allee, who, on the 10th Chyto 1231, mortgaged to the minor's father the share alluded to in the plaint. On foreclosure and institution of suit a decree was passed in his favor, and he was put in possession. Plaintiff does not mention when Ameena died, or of which of Amanollah's wives she was the daughter—neither does she say who was her own mother. The farm to Byjnath Mojmoadar of the 18 gundahs 1 cowry 1 krant in fact proves Ashruff Allee's proprietary right. Why has plaintiff so long delayed bringing this suit?

Plaintiff, in reply, stated: Ameenah and herself were daughters by Lotcefa, and whilst a uterine brother or sister is alive, a half brother or sister cannot, under Mahomedan law, succeed. Ameena died in 1227—Ashruff during plaintiff's minority gave the mortgage bond to Pogose. In 1222, Ameena pledged her share to Toonee Patuck, which plaintiff released by repayment of the loan on attaining her majority, and holds documentary proof of the fact.

Defendant, in his rejoinder, stated that Amanollah died in 1220: plaintiff was then about 2 years old, her mother Lotcefa was a slave girl, about 14 or 15 years old; at that time Ameena was about 30 years of age, and married in 1221 to Noor Allee, before whom she died. Ashruff Allee and Ameena were own brother and sister, children of Musst. Dilbur. Ashruff Allee paid the amount due to Toonee Patuck, with the cash lent by the minor's father, and is the instigator of this suit.

The case was in the first instance disposed of by Mr. Golding on the 10th January 1839, who gave a decree in favor of the plaintiff. It was then appealed to this Court, and returned on the 7th September 1839, by Mr. Tucker for further investigation, as the defendant's witnesses had not been examined. It was again taken

up and tried by Mr. Golding on the 29th December 1840, who again decreed for the plaintiff. In appeal to this Court Mr. James Shaw, a judge, remanded the case on the 8th March 1842, as Mr. Tucker's orders had not been carried out, on which Mr. Loughnan, the present judge, retried it, and on the 30th October 1843, upheld the judgment passed by his predecessor in December 1840, being of opinion that the fact that plaintiff and Ameena were own sisters was proved, and plaintiff consequently entitled to succeed to her deceased sister's share.

An appeal having been preferred against this last order, the case was heard by a full bench on the 15th instant. The Court, on full consideration of the evidence adduced by the parties, are not satisfied that the plaintiff has established her claim of succession to Ameena's estate as her own sister. On the contrary the depositions of certain relatives of both parties put in by the defendant disprove the fact, and their evidence is supported by a power of attorney dated 15th February 1814, signed by Ameena and her other half sisters, in which Loteeffa Beygum is distinctly mentioned as the mother of Bunnee Beygum only—and also by a proceeding of the judge of Backergunge of the 25th September of the same year. Under the above circumstances the Court dismiss the plaint with costs in both courts.

THE 3RD JUNE 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 208 OF 1844.

*Regular Appeal from a decision of the 2d Principal Sudder Ameen of
Tirhoot, Sydul Ashruf Hossein, passed May 13th 1844.*

GUNGA PURSHAD, AND FORTY-SIX OTHERS, APPELLANTS,
(PLAINTIFFS,)

versus

RAJ KOMAR RAE, AND TWENTY OTHERS, RESPONDENTS,
(DEFENDANTS.)

THIS suit was instituted on the 9th February 1842, by appellants, to recover from respondents 1176 beegahs and 7 beeswas of land belonging to mouzah Tal-Bhurtel, the property of appellants, the estimated value of which was Company's rupees 14,704; with wasilat or mesne profits.

The only document bearing on the question at issue, filed by appellants, was a decree passed by the judge of Tirhoot, on the 14th March 1818, by which the whole of the land lying to the south of a certain embankment, called the 'Hurbuns Bund,' to the village of appellants, in that direction, was adjudged to them, appellants, in proprietary right. This decree was supported on the present occasion by the evidence of seven witnesses; who deposed to appellant's possession of what is conferred, for a series of years, without challenge or interruption.

On trial, it appeared, that, in the suit in which the above decree was passed in 1818, the claim of appellants was to recover (from respondents) 100 beegahs of land: the judgment, it may be presumed, was deemed to involve nothing further; but when the award came to be executed, it was discovered that the quantity of land adjudged, greatly exceeded what had been claimed; and a review of the case was ordered by the Sudder Court. The result of this, was a decree for the hundred beegahs originally sued for; and permission to appellants to institute another suit, should they see fit, for any further quantity they might consider themselves entitled to. The present action was the consequence, for 1176 beegahs 7 beeswas more.

There being, literally, nothing beyond the above cancelled decree, and the evidence of seven witnesses, refuted by that of the same number on the part of respondents, in support of appellant's claim, it was of course dismissed; and nothing further appearing, in appeal, to render an interference with the judgment proper, it is hereby affirmed, with costs payable by appellants.

THE 5TH JUNE 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE,

CASE No. 56 OF 1843.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Mutnapore, Ram Mohun Ray.*

MESSRS. R. AND J. WATSON, (PLAINTIFFS,) APPELLANTS,

versus

JUGGUT CHUNDER MOKERJEA, MOHEIS CHUNDER
MOKERJEA, HURRIS CHUNDER MOKERJEA, PRAN
CHUNDER MOKERJEA, DECEASED, AND HIS WIDOW BIR-
MA MAYEE, (DEFENDANTS,) RESPONDENTS.

THIS plaint was filed on the 20th May 1840, and sets forth that the plaintiffs, on the 21st August 1837, or 7th Bhadon 1244, got a putnee talook of one half of pergunnah Bogree, and the whole of turf Behlah Munglapoota from the defendants. It was agreed that plaintiffs should pay the whole of the Government revenue from Bysack to the close of 1244 to the collector, and the defendants were to account for the collections they made in the mofussil during that period—such were the terms of the pottah. The *sudder jumma* of the 8 annas of Bogree is 22,119 rupees, 4 annas, and that of 16 annas turf Behlah 6,378 rupees 8 annas, which plaintiffs have paid.

They have also paid to the defendants other sums for which they hold their receipts as follows:

On the 31st August 1837,	for	4,741	14	0
„ 9th December ditto, ...	„	11,929	1	0
„ 26th March 1838,	„	8,813	5	4
		<hr/>	<hr/>	<hr/>
		25,484	4	4

The defendants, when the estate was in their hands, collected large sums, failed to pay the Government revenue, when it was put up for sale, and the plaintiffs, in order to secure their putnee rights, paid the balances which had accrued during defendants' possession, and got receipts for the same from the collectorate as follows:

13th June 1838,	for	795	5	10
20th Ditto ditto,	„	1,095	8	8
28th July ditto,	„	306	2	2
6th August ditto,	„	74	7	4
15th July 1839,	„	1,886	8	3
		<hr/>	<hr/>	<hr/>
		4,158	0	3

The defendants, in violation of the pottah, from the 2d Srabun to the 12th Bhadon 1244 collected 4,470-4-1 from the ryots, which they appropriated to their own purposes; the expence of collections being deducted, a net balance of 3,870 Sicca rupees, 4 annas 3 pie, or 4,136 Company's rupees, 4 annas 3 pie, is due by the defendants on this score.

From the above account it appears the whole amount of payments made by the plaintiffs on account of the defendants is 33,778 Company's rupees, 8 annas 10 pie, to whom 28,497 Company's rupees 1 pie 13 annas, is due as putnee jumma for 1244—leaving a balance of 5,280-11-9, in favor of plaintiffs, which, with interest 1,177 rupees 14 annas 7 pie, amounts to 6,458 Company's rupees, 10 annas 4 pie, the cause of action.

The defendants in answer pleaded that the plaintiffs' claim is directly opposed to the terms of the agreement drawn up and to the pottah which runs thus: "Whatever former balances or advances are recoverable from the ryots in the mofussil, antecedent to the close of the year 1243 B. S. are to be collected by the plaintiffs and are their right." Defendants urge they did not collect the 4,136 rupees, 4 annas, 3 pie, as alleged by plaintiffs in violation of the agreement; that plaintiffs are entitled to balances up to the end of 1243, and from the date of the pottah the 8th Bhadon 1244, not previous to that date. They further plead, that plaintiffs do not say on what account or under what documents they paid the several sums to the collector; that they have not settled with them for the rents of 1245 or 1246, for the realization of which, measures

have been taken, and that on an adjustment, the *putnee* jumma being brought into the account, they will have large sums to receive from the plaintiffs.

Plaintiffs in reply urged, they paid balances of former years which accrued during defendants' occupancy, to prevent the sale of the estate and to secure their *putnee* tenure. Defendants rejoined that the agreement no where stipulates that sums collected by them between the commencement of 1244 and the 8th Bhaddon of that year are to be refunded by them.

The principal sudder ameen, on the 16th April 1841, gave judgment, awarding a portion only, 4,158 rupees, 0 annas, 3 pie, of plaintiffs' claim and rejecting the remainder.

He was of opinion that the agreement [pottah] dated 7th Bhaddon 1244 had not been violated. But the defendants were not bound by it to account to the plaintiffs for collections made between the commencement of 1244 and the date of the pottah.

That the sums said to have been paid to the defendants on their receipts had nothing to do with this case.

That the plaintiffs' *putnee* jumma appeared to be, as per kubooleeut filed, 39,165 rupees, but they do not specify what is the amount of the *sudder* jumma of the *putnee*, and what the amount of *profits* on the estate, without a detail of which no settlement of account could be made.

That two receipts for 20,000 rupees, put in by the plaintiffs, not being included in the plaint, formed ground for separate actions, and could not be enquired into in this.

The parties claim balance one from the other, and, until accounts are settled, it is impossible to say whose claim is good. The question what has or has not been collected during the *putnee* by the *zumeendar*, and what excess has been paid, does not come within this investigation. Should the defendants consider any sum due on account of rents of 1244 as per kubooleeut by the plaintiffs, they can sue for it.

Plaintiffs are however entitled to recover 4,158 rupees paid on account of the defendants for *former* balances. The collector's receipts (4) Nos. 4076, 2368, 4110, 5865 prove the sums paid were for balances, during defendant's occupation, amounting to 4,365 rupees; but as plaintiffs only sue for 4,158 rupees, that amount is decreed with costs and interest on both sums. If defendants have ought to recover for 1244 let them sue as per kubooleeut, and if plaintiffs have made advances to the defendants they are at liberty to sue. Costs of claim not proved chargeable to plaintiffs.

On the 17th July 1841, the principal sudder ameen applied for permission to review his judgment which was granted by Messrs. Tucker and Reid on the 4th August following.

The grounds of his application were that further investigation of the receipts from the collectorate was necessary to ascertain whether

they were for balances of the years antecedent or subsequent to the putnee before they are carried to account.

On the 22d December 1842, the principal sudder ameen again took up the case; and, after holding the enquiry requisite for the elucidation of the point above indicated, he dismissed plaintiffs' claim (formerly decreed) on the four dakilas (receipts) in question, founding his decision on a report made by Soonder Nurain Mitre, a mohurrir of the collectorate.

An appeal was preferred by the plaintiffs against this decision, and the defendants replied to it, and the case came on for hearing on the 25th April, the 2d, 16th, 29th May, and again this day.

The Court observe the pleadings in this case have not been prepared with any care; and the proceedings of the principal sudder ameen have been drawn up in a most confused manner. The following however appears to be the state of accounts between the parties: plaintiffs credit themselves with

25,484	4	4	paid to the defendants themselves as per receipt.
4,158	0	3	paid on their account to the collector for rents due antecedent to plaintiffs' putnee.
4,136	4	3	sums collected by defendants <i>after</i> plaintiffs had got their putnee in violation of the terms of their agreement.
33,778	8	10	

From this they deduct the *sudder jumma* of the putnee 28,497-13-1, claiming a balance of 5,280 rupees, 11 annas 9 pie, for which they sue with interest, making total 6,458 Company's rupees, 10 annas 4 pie.

The defendants allege that the putnee jumma of the estate, as per kuboolecut, for which the plaintiffs are accountable to them, is 39,165 rupees.

The principal sudder ameen, it will have been seen, in his judgment of the 16th April 1841, decreed the sum of 4,158 rupees in favor of the plaintiffs, but subsequently disallowed that sum in his proceedings in review of judgment on the 22d December 1842.

He rejected plaintiffs' demand of 4,136-4-3, as by the terms of the kuboolecut filed by them, the defendants were not prohibited from making collections from commencement of 1244 to the date of the pottah granted to plaintiffs.

Regarding the third item 25,484 rupees, 4 annas 4 pie, which though it is not distinctly and specifically alluded to can be the only one to which he refers; he observes in one place it has nothing to do with this case, and in another, it does not come within this enquiry. The Court remark as to this item that neither of the parties before them look upon it in the light of extraneous matter, not coming within the account, on the contrary defendants by

raising no objections must be considered to have tacitly admitted it as a true item—moreover the defence is mainly grounded on a settlement of accounts as they stand on the record, by which the putnee jumma being taken as a set off against the item in the plaint, a considerable balance would be due to the defendants.

To dispose of the case then without a specific declaration of the validity or otherwise of this item of the account, the Court hold to be a wide departure from the investigation necessary for the development of the merits of the case and the points at issue.

It is clear from the record that the monetary transactions in this case refer to the putnee tenure solely, and to a settlement between the parties for the year 1244, a balance should therefore have been struck between them—for the plaintiffs, if supported by their exhibits,—for the defendants, if the aggregate of those exhibits did not amount to the sum (no where denied by the plaintiffs) claimed by the defendants as their putnee jumma.

The Court find from the pleadings and the *viva voce* examination of the vakeels of the respondents that the item rupees 4,136, 4 annas and 3 pie, is the only one really contested. The question is a mere adjustment of accounts; and the point to be ascertained is the amount actually paid by the appellants to, or on account of the respondents, and for which they, the appellants, are entitled to receive credit in accounting to the respondents for the rent payable by them for their putnee for the year 1244.

The payment of the items 25,484 rupees, 4 annas 4 pie, and 4,158 rupees, 0 annas 3 pie, is no where denied; but of the latter item receipts for only 2,188 rupees, 4 annas 5 pie are forthcoming on account of 1244 and preceding years. The remainder seems to have been paid on account of the subsequent years 1245 and 1246, and will appear to appellants' credit on adjustment of accounts for those years respectively. Regarding the third item 4,136 rupees, 4 annas 3 pie, the respondents do not deny having collected that sum from the plaintiffs' putnee, but affirm that they did not so collect in violation of the terms of the pottah under which the plaintiffs, appellants, hold their putnee.

They state that the said pottah is dated 7th Bhadon 1244, and that it contains no stipulation that the rents from the commencement of the year shall be refunded to the appellants. But the Court find that the lease binds the appellants to pay the full jumma for the entire year 1244 without any stipulation that they were not to have the mofussil rents for the whole year. This being the case Messrs. Tucker and Reid consider the appellants entitled to credit for this item also, whilst Mr. Barlow is of a contrary opinion, thinking that where so much has been particularized in the agreement between the parties the absence of any stipulation rendering it obligatory on the respondents to account to the appellants for the sums collected between the 1st Bysack and 7th Bhadon 1244,

the plea on which the appellants found their claim to this item is not supported and therefore would not allow it. In respect of the other two items Mr. Barlow concurs with his colleagues.

The Court however whilst decreeing for the appellants to the extent of the aforementioned three items, amounting in the aggregate to rupees 31,808-12-12, find that the jumma payable by the appellants to the respondents for the year 1244, on account of their putnee is rupees 39,165, consequently there is no excess due to the appellants, but on the contrary a balance on the year is still due to the respondents; under these circumstances the Court award costs in both courts against the appellants.

The Court in the course of their enquiries having found reason to complain of the very defective and confused manner in which the principal sudder ameen has dealt with this case, evincing either a very blameable carelessness or an incapacity to grapple with it, desire that this opinion of the Court be communicated through the judge to that officer.

THE 6TH JUNE 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 281 of 1843.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, 17th January 1843.

SURDHA SINGH, AND FIVE OTHERS, APPELLANTS,
(PLAINTIFFS,)

versus

BOONIAD SINGH, AND EIGHT OTHERS, RESPONDENTS,
(DEFENDANTS.)

THIS suit was instituted by appellants, on the 10th February 1836, to recover from respondents the wasilat, or mesne profits, of certain villages asserted to have been decreed to the former by the pundit sudder ameen in 1820; the judgment being affirmed by the zillah judge in 1823. The sum claimed, was, principal and interest, Sicca rupees 9712.

It is sufficient to state, that the original decree for the land was clearly and distinctly confined to a single specified village; but the appellants sought to shew, that this included other depen-

dent villages, to the profits arising from which they were equally entitled.

With reference to the undoubted wording and intention of the decree for the land, the principal sudder ameen adjudged the mesne profits to be due on the single village of Puttapoor Bulwāsaree only, and decreed this, to the amount, principal and interest, of Company's rupees 858-10-0.

In appeal, nothing new having been advanced, and the Court concurring with the lower court as to the land adjudged in 1820, the decree of the principal sudder ameen is affirmed with costs payable by appellants.

THE 11TH JUNE 1845.

PRESENT :

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 76 OF 1844.

*Regular Appeal from the decision of C. Mackay, Esq., Principal
Sudder Ameen of Mymunsigh.*

RAMKOOMAR CHUCKERBUTTEE AND RAMMUNNY
DEBYA, WIFE OF NUBKOOMAR CHUCKERBUTTEE,
DECEASED, APPELLANTS,

versus

TARAMUNNY DIBYA, BISHAYSHUREE DIBYA, ESHAN
CHUNDER CHUCKERBUTTEE AND OTHERS, RESPONDENTS.

THE facts of this case, as stated by the appellants are these. The father of Ramkoomar, and father-in-law of Rammunny, viz. Ramkishwur Chuckerbuttee, and the defendant Birjkishwur Chuckerbuttee, were full brothers and in partnership. The branch of the business that was carried on at Nusseerabad, was managed by Birjkishwur. Ramkishwur died in 1241, during the minority of his sons, Ramkoomar and Nubkoomar, the deceased husband of Rammunny. Birjkishwur, concealing the true accounts, and appropriating the proceeds of decrees that had been passed in favor of the appellants individually, he separated his interests from those of the appellants, in the month of Bysakh 1243. Notice was given both in the criminal and civil courts, how purely nominal the division of the property had been. Afterwards, both parties appointed Sum-

bhoonath Mujmoadar, formerly a sudder ameen, and others, arbitrators. Before an award was given, Birjkishwur died in the month of Assin 1243. After the departure of Sumbhoonath to another district, the box containing the accounts was placed by another person by name Sumbhoonath, a wakeel of court, in his house, he and a person called Ramdoolal Surma, the attorney of the respondent Taramunny leaguing together. This Sumbhoonath, the wakeel, being afterwards made executor and manager of the estate of Birjkishwur, and not filing in court a full list of the papers committed to him, the above mentioned box was taken possession of by the magistrate, on the application of Ramdoolal Surma, and afterwards, at the request of the appellants, made over to the custody of the civil court. The appellants on applying to the judge for copies of the papers in the box, were, according to his proceedings dated the 30th March 1840, referred to a regular suit. They accordingly instituted the present suit, in the zillah court of Mymensingh, on the 29th May 1840, that they might recover what belonged to them, from amongst the papers of the box, as appertaining to their individual property; and that with respect to the joint property, the documents might be kept in deposit, and copies granted to them when necessary, or that any original document might be sent to any court of justice, requiring to inspect the same, in any suit, which the appellants might find it necessary to institute. They laid their action at Company's rupees 14,994 15 annas.

The respondents, in substance answered, that the appellants had no right to the papers claimed by them: without proof of right adduced, the papers cannot be legally given to them. A final separation of interests took place in the month of Bysakh 1243, on which occasion, both parties received their proper share of the joint property, and each person got what belonged to each individually.

On the 19th December 1843, the principal sudder ameen dismissed the suit, not thinking that the plaintiffs had established their claim to receive the papers.

It appears from the admissions of both parties in this case, and from the proceeding of the judge, above referred to, that there is under the custody of the civil court, a box containing papers, apparently connected with the points in dispute between the parties. In order to ascertain whether the appellants were entitled to a decree in their favor, or not, the principal sudder ameen ought to have given them full access to those papers. This he has not done. The case, accordingly, has not been properly investigated. I return it, that it may be restored to the principal sudder ameen's file; that the appellants may through their wakeels, and in presence of the wakeels of the respondents, have free and full access to the papers contained in the box; and that the principal sudder ameen, after hearing what the appellants have to urge, in support of the claims set forth in their suit, subsequently to their having had access to the

papers, and also taking into consideration, what may be stated by the respondents, will pass a decree. The appellants are entitled to have the price of the stamped paper, on which their appeal was written, returned to them.

THE 11TH JUNE 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 103 OF 1844.

*Regular Appeal from a decision of the Principal Sudder Ameen of
Tirhoot, Syud Ushruf Hosein, passed 18th December 1843.*

SHEORAM SINGH, AND EIGHT OTHERS, APPELLANTS,
(PLAINTIFFS,)

versus

THE COLLECTOR OF TIRHOOT, THE COLLECTOR OF
SARUN, BABOO KISHUN DEO NURAIN, BABOO
BISHUN DEO NARAIN, AND DEEL CHUND SAHOO,
RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellants, on the 30th December 1840, to recover from respondents eight hundred and fifteen beegahs of land, valued at 8,150 Company's rupees, belonging to mouzah Bengra, of which appellants are proprietors; and to obtain the reversal of an order passed by the magistrate under Regulation XV. of 1824, and affirmed by the commissioner, declaring respondents entitled to possession of the same.

The result of a very long and tedious enquiry into the rights and facts involved in this case, was a rejection of the claim preferred; the land not only not being proved to belong to appellant's mouzah, Bengra, but being situated a great distance off, to the south of Bengra, with the estates of other proprietors, besides respondents', intervening.

On the evidence to this effect, the principal sudder ameen dismissed the suit; and, on the same grounds, the decision is affirmed, with costs payable by appellants.

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THE 17TH JUNE 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 8 OF 1843.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Zillah Rajshahee, Moulvee Seind Abdool Alea.*

BHYRO CHUNDER MOOJUMDAR, APPELLANT,

versus

KISHUN SOONDUR GOHA BUKHSEE AND BISHOO

NATH SIRCAR, RESPONDENTS.

Mr. Sevestre, Appellant's Pleader.

Sree Ram Race and Tarik Chunder, Respondents'.

THE appellant preferred this appeal against so much of the decision of the principal sudder ameen as saddled him with his own costs, in a suit in which the respondents had sued him, a putneedar, together with another person named Chunder Narain Race, the zumeendar of the putnee tenure, who had sold the zumeendaree to the respondents, and refused to give possession, although the principal sudder ameen had declared him free from all liability. And contended, that the respondents, having wrongfully sued him, should themselves have been saddled with the costs.

The respondents argued that the appellant having colluded with the zumeendar to dispossess them, after having been shewn due authority from the zumeendar to pay them the putnee rent, viz. the kabala or deed of sale, the aumilnameh, or warrant to pay rent, and his own kabooleent, or counterpart agreement for the putnee tenure, in their possession, was very properly saddled with his own costs of suit.

JUDGMENT.

It appears from the contents of the deed of sale, from the aumilnameh and their possession of the kabooleent, that the respondents were to obtain possession on their purchase through the appellant—they therefore very properly included him in the suit which they were obliged to institute against the seller, the zumeendar, for possession. If the appellant colluded with the zumeendar, and refused to give possession, and recognize the respondents as proprietors, then he has been properly saddled with the costs. But, if when sued for the rent by both zumeendar and respondents, sided

with neither, and evinced a readiness to pay in deposit the rent due by him, then his costs should have been decreed payable by the zumeendar, against whom, for possession with usufruct and costs, decision was given in favor of respondents. The principal sudder ameen made no inquiry on this point, and there is nothing on record to prove it; therefore, ordered, that the case be returned to the principal sudder ameen, for him to call for evidence to shew who was in fault and then decide.

THE 17TH JUNE 1845

PRESENT:

C. TUCKER,

JUDGE.

PETITION No. 598.

IN the matter of the petition of Kyalee Chowdry, and others, filed in this Court on the 29th July 1844, praying for the admission of a special appeal from the decision of the principal sudder ameen of zillah Tirhoot, under date the 30th April 1844, affirming that of the sudder ameen of the same zillah, under date 24th June 1843, in the case of Karee Misser, and others, plaintiffs *versus* Kyalee Chowdry, and others, defendants.

It is hereby certified that the said application is granted on the following grounds:

The plaintiff sued to recover possession of 12 beegahs and 4 biswas of land in mouzah Moobarukpoor, alleging the same to be birmutter. This case was tried, and disposed of, by both sudder ameen and principal sudder ameen, without reference to the collector under Section 30, Regulation II. 1819, consequently the decrees are null and of no effect.

The special appeal therefore is admitted, and the case is returned to the lower court with orders to proceed *de novo*, as directed in the Regulation quoted above.

THE 17TH JUNE 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 2 of 1844.

*Special Appeal from the decree of Mr. J. F. G. Cooke, late Judge
of Dacca.*

RAJKISHEN SHAH, AND OTHERS, APPELLANTS,

versus

MUSST. DIHUNMUNNY DASSEE, WIDOW OF ROOPNU-
RAIN SHAH, RESPONDENT.

THE respondent sued the appellants, in the zillah court of Dacca, on the 15th March 1839, for Company's rupees 5000, which sum she alleged she had a right to, as the heir of her husband, and which was his share of the profits realized by him and appellants, at the time of his death, but which the appellants unjustly withheld from her.

The appellants answered, that the respondent had compromised her claim with them, accepting in lieu of all demands, the sum of rupees 1400, and they produced an alleged receipt by the appellant, for that sum.

On the 13th April 1840, Mr. James Reily dismissed the suit with costs, as he considered the defendant's case to be proved.

On the 27th April 1843, the judge, thinking, for the reasons set forth in his decree, that no compromise took place, and that the plea of the defendants was fraudulent, likewise that the plaintiff's case was fully proved, reversed the decision of Mr. Reily, and awarded to the plaintiff the full amount sued for with costs.

This case was admitted to be tried in a special appeal, by Mr. Tucker, on the 5th December 1843, because the plaintiff had intimated in her plaint, that she would institute other suits against the defendants, for other property, in addition to that now sued for; which course was contrary to the construction of the law, as contained in this Court's Circular Order, dated the 11th January 1839.

With respect to this ground for admitting a special appeal, it has been ruled, in the case of Bhola Nath Baboo, page 33, of part 2, of summary reports, that a plaintiff is not necessarily to be nonsuited, because he did not include the whole of his claim, in one plaint. "The action must be tried and decided on its merits, but in the event of the plaintiff bringing a second action for property which ought to have been included in the first plaint, the question would

arise, whether it could be heard." Under these circumstances, I am bound under Act III. of 1843, to reject this appeal, and (having no jurisdiction with respect to facts) to confirm the decree of the zillah judge with costs.

THE 18TH JUNE 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

PETITION, NO. 258.

IN the matter of the petition of Sheikh Nowazesh Hussein filed in this Court on the 16th May 1844, praying for the admission of a special appeal from the decision of William St. Quintin Quintin, additional judge of Behar, under date the 21st February 1844, reversing that of Zynoolabdeen, moonsiff of Aurungabad, under date 27th June 1843, in the case of petitioner plaintiff *versus* Kadira Begum defendant.

It is hereby certified that the said application is granted on the following grounds:

The plaintiff instituted this suit to recover the sum of 175 rupees, in consequence of the illegal attachment of his crops. He pleaded that his tenure was that of *Agore Buttai*, by which he paid in kind; and that the servants of the zumeendar, (the defendant,) had cut the crop and taken the zumeendar's share. The moonsiff, deeming the facts pleaded by the plaintiff proved, passed a decision in his favor. The additional judge, without determining the sum payable by the plaintiff to the defendant as rent, and without giving any opinion as to whether the plea of the plaintiff that he holds under a tenure of payment in kind is established, or not, after asking the plaintiff's vakeel, if he held any receipt for the rent, reversed the decree, on the plea that it was not proved that the plaintiff had paid what was due to the defendant. The Court observed that, under the plea of the plaintiff, the judge ought not to have called for receipts, it not being customary in tenures of this description to grant or require receipts; and that he should have confined himself to determining whether the facts admitted by the moonsiff were proved or not. They, therefore, admitting the special appeal, send back the case to the judge, with instructions to decide on this point.

THE 18TH JUNE 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE,

PETITION No. 255 OF 1845.

IN the matter of the petition of Buwanee Shunker Chukerbutty, filed in this Court, on the 15th May 1844, praying for the admission of a special appeal from the decision of Nujum ool Huc, principal sudder ameen of West Burdwan, under date the 21st March 1844, reversing that of Zamin Ali, moonsiff of Radhanuggur, under date 27th June 1843, in the case of petitioner, plaintiff, *versus* Raja Jye Singh Deb, and others, defendants.

It is hereby certified that the said application is granted on the following grounds:

The plaintiff sued to recover possession of 7 beegahs of lakhiraj land in mouzah Talsagra. The defendant Raja Jye Singh Deb, pleaded that the said land was included in his rent-free lands, which had been resumed by Government and settled with him. The moonsiff passed a decree in favor of the plaintiff; but the principal sudder ameen nonsuited the plaintiff, and gave him authority to institute a new suit making Government a party.

The Court are of opinion that there was no necessity to make Government a party to the suit. Under the mode of defence adopted by the defendant (and which the plaintiff could not have anticipated) it was merely necessary for the Court to investigate into the truth or otherwise of the fact pleaded by the defendant. If proved, the plaintiff's claim must be dismissed, as the ordinary courts have no jurisdiction over the decisions of the resumption officers. On the other hand, if the fact pleaded by the defendant be not established, the plaintiff will be entitled to a decree.

They therefore admit the special appeal, and direct that the case be sent back to the principal sudder ameen, with instructions to restore the appeal to the file, and dispose of it in the mode above indicated.

THE 21ST JUNE 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 181 OF 1843.

Regular Appeal from the decision of Oopindurnarain Neyaruttun, Principal Sudder Ameen of Zillah Rungpore.

KALEECHUNDER SURMA CHOWDRY, APPELLANT,

versus

EESHIURCHIUNDER CHOWDRY, No. 1, BIMULA DIBBYA CHOWDRY, No. 2, AND KASIIIEECHUNDER CHOWDRY, No. 3, RESPONDENTS.

THE appellant states, that himself and his elder brother, the respondent No. 3, are proprietors, each of 4 annas share of Pergunnah Koontee; the respondent No. 2, the mother of respondent No. 1, being the proprietress of the remaining 8 annas. Whilst the appellant, and respondent No. 1, were minors, the respondent No. 3, had the management of the estate, and had his name registered as the proprietor of an 8 anna share. This continued up to the time when the appellant came of age. After he had reached his majority, and when he proceeded to collect rents from his share, he met with opposition from the respondent No. 1, on the ground, that during the minority of the appellant, the respondents Nos. 2 and 3 had made a private division of the estate, on the principle of allotting the villages to the shares, in the proportion of the rents realizable from them; and that the appellant could not be allowed to collect contrary to that arrangement. The appellant accordingly instituted the present suit, in the zillah court of Rungpore, on the 11th of August 1842, to have the private division cancelled, and his right to 4 annas of the joint estate adjudged, on the ground that the respondent No. 3, was not empowered to make the division in question, and because at the time of the division, there was an agreement entered into between the parties, to the effect, that if either discovered the division to be disadvantageous, a new division should take place, or both parties might revert to the practice of collecting in a joint form. The action was laid at rupees 14,755-3-8.

The respondents Nos. 2 and 3 were included in the suit, by a supplementary plaint, they being sharers, and parties to the division, but not as opposing the claim of the appellant, which on the contrary they uphold.

The respondent No. 1 answered, that the division had been entered into voluntarily and in good faith, and that no such agreement as that mentioned by the appellant, had ever been executed. That the appellant could not plead minority, as a bar to the legality of the division, because he had, after he came of age, approved of the division, and had acted on it for several years. That this respondent resisted the present claim, because his mother, the respondent No. 2, was under the influence of the appellant, and No. 3, and as a division of his own and his mother's shares had taken place, his rights would be injured by the others, if the original division were cancelled.

On the 25th March 1844, the principal sudder ameen dismissed the suit, with costs, because it was illegal to bring a claim of this kind into the civil court, in the first instance; the proper course of the plaintiff being, to apply to the collector for a butwarrah, under Clause 2, Section 4, and Section 6, Regulation XIX of 1814.

The points of this case, are, 1st, whether the parties could legally enter into a private division at all? 2dly, whether, if legal, the alleged division was voluntarily, in good faith, and unconditionally, entered into between respondents Nos. 2 and 3, and afterwards, consented to, and acted on by the appellant, when he came of age? With respect to the first point, I am not aware, that there is any legal objection to a private division amongst the sharers of a joint estate. By such a division, the sharers would not be relieved from joint responsibility, as far as the Government revenue is concerned; and farther, by such a division, the sharers would be barred from effecting a separation of their shares, under Regulation XIX of 1814, because by this law, the revenue authorities are required to allot land in the proportion of the revenue, or jumma of the share, and this would be impossible on the supposition, that the proprietors had already disposed of the land in certain allotments by private contract. Subject however to these restrictions, a private division, is in my opinion, legal, and could not be prevented, without interfering with the rights of private property. This being the case, the principal sudder ameen was bound to investigate the facts, with reference to the second point indicated above. Instead of doing so, he dismissed the suit wholly on a ground which has nothing whatever to do with the case. The law quoted by him, bears reference to a case, in which a party claims to have his share of an estate, legally divided and separated from the rest of the estate. The present suit, on the contrary, was instituted to have a division cancelled. Besides supposing that the appellant had wished to have his share separated according to law, it would have been impossible for him

to accomplish that object, without previously obtaining a decree, establishing his right to a four anna share of a joint estate: for if he applied to the collector under Regulation XIX of 1814, that officer must have stopped all proceedings, if the respondent No. 1 objected, (as he would have been sure to do,) until the very question to try which the present suit was instituted, should be decided by the civil court. Under these circumstances, I return the case, that it may be restored to the principal sudder ameen's file, and investigated and decided on, as above indicated. The appellant is entitled to receive back the value of the stamped paper on which his petition of appeal was drawn up.

THE 21ST JUNE 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 174 OF 1844.

*Regular Appeal from the decision of Oopindernarain Nayaruttun
Principal Sudder Ameen of Zillah Rungpore.*

KASHEECHUNDER RAI CHOWDRY, APPELLANT,

versus

EESHURCHUNDER CHOWDRY AND OTHERS, RESPONDENTS.

THE facts and circumstances of this case, are the same as those set forth in the case No. 181 of 1844, of this Court, with this difference, that the appellant in this case, who was the plaintiff in the lower court, was one of the respondents in the former case.

The same order is applicable in this case, as that which I have just passed in the other.

THE 24TH JUNE 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 230 OF 1844.

*Regular Appeal from a decree passed by the Principal Sudder Ameen
of Tirhoot, Syud Ushruf Hosein, June 3d 1844.*

CHEONEE LAL CHOUDHREE, DHOOKHOO LAL CHOU-
DHREE, AND MUSST. LALOO, APPELLANTS, (DEFENDANTS,)
(BECHOO CHOUDHREE—DEFENDANT, but does not appeal),

versus

MAHA RAJAH ROODUR SINGH, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, on the 15th of August 1843, to recover from appellants the sum of eight thousand seven hundred and eighteen rupees, six annas and one pie, (Co.'s rupees 8,718-6-1) principal and interest, due on a kistbundee, or instalment-bond, bearing date the 19th of Assin 1244 Fuslee.

The appellants are (in the order in which they stand above) the brother, nephew, and widow of Bolakee Choudhree; and the last, the widow, is also mother and guardian of Bolakee's minor son, Rambukhsh.

The statement of appellants, is, that, after the death of Bolakee (with whom the debt originated) and in the life time of maha rajah Chuttur Singh, baboo Ajeet Thakoor, tuhseeldar of the raj, called them before him, and, after making up the account of money due by them, accepted the kistbundee on which the suit depends, Bechoo being included as a party to the arrangement; and that, after this, viz. on the 29th of Jeyth 1247 Fuslee, maha rajah Chuttur Singh and baboo Ajeet Thakoor being dead, baboo Deokeenundun Thakoor, the persent tuhseeldar, sent for them, and shewed them their account as it then stood,—when they paid the amount in full, principal and interest, including Bechoo's share, and received back the kistbundee they had executed, and which they have filed with the proceedings:—this in the presence of several respectable persons, who can vouch for the truth of what is thus set forth.

The respondent asserts the above statement to be false: no part of the debt was ever paid; and the kistbundee, which had been in

his possession, was lost. How it came into appellants' hands, he cannot say.

Nine witnesses were named by appellants, in support of the transaction between them and the tihseeldar Deokeenundun:—of these, four depose to the payment said to have been made to him; one had heard of such payment; and four deny all knowledge of the matter to which they were summoned to give evidence. Of the four who depose to the payment, none pretend to a knowledge of more than the simple fact. There is no detail of the mode of payment; the nature of the rupees paid; whence they were obtained; how brought to the spot; or how acknowledged: there is no receipt for the money, nor any pretence of one having been given; nor is there any endorsement or marginal memorandum on the kistbundee, in allusion to any payment having been made with reference to it. It was deemed a fair inference from these circumstances, that the kistbundee had been surreptitiously obtained by appellants, and that its amount was still due; and so thinking, the principal sudder ameen passed a decree in favor of respondent.

Nothing new being urged in appeal, and concurring in the view of the case taken by the lower court, I affirm the judgment appealed from, with costs payable by appellants.

THE 24TH JUNE 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 234 OF 1844.

Special Appeal from a decree passed by the Judge of Zillah Sarun, George Gough, November 25th 1843, modifying a decree passed by the Principal Sudder Ameen, Syud Inlud Ali, April 26th 1843.

DOWLUT KONWUR, APPELLANT, (PLAINTIFF,)

versus

BISHUN SUHAEE SINGH AND BHEENUK LAL,

RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant, on the 25th November 1842, to recover from respondents two thousand eight hundred and ninety-four rupees and four annas, principal and interest, due on a bond sold to appellant by the respondent Bheenuk Lal; the said

bond having been granted to Bheenuk Lal by Bishun Suhaec, the other respondent in the case.

The circumstances of this transaction were as follows:—appellant held a bond, executed in his favor by the respondent Bheenuk, for 1,200 Sicca rupees; Bheenuk held another bond, executed in his favor by Bishun Suhaec, for Sicca rupees 1,424. Appellant regarding the latter as a safer instrument than the one he held, paid the difference between the two amounts; cancelled the bond for 1,200 rupees; and took from Bheenuk, in payment of his debt, Bishun's for 1,424.

Bishun denied the bond transferred, as his, from Bheenuk to appellant; and the latter brought the present action to substantiate the validity and enforce payment of it,—making, by way of precaution, Bheenuk a party to the suit.

The principal sudder ameen passed a decree in favor of appellant, against Bishun, releasing Bheenuk from responsibility.

From this decree an appeal was made to the zillah judge; who determined that the action could not be maintained against Bishun; and, on this ground, reversed the decision of the principal sudder ameen.

A special appeal from this judgment was admitted by the Sudder Court, with reference to the erroneous opinion entertained by the judge, and the mistaken principle on which he had based the decision now appealed against; and the proceedings are hereby ordered to be returned, that the validity of the bond may be enquired into, and the case be disposed of according to the result of such enquiry.

THE 25TH JUNE 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 471.

IN the matter of the petition of Surnam Misser, filed in this Court on the 28th June 1844, praying for the admission of a special appeal from the decision of the judge of Shahabad, under date the 29th March 1844, affirming that of the principal sudder ameen of the said zillah under date 28th July 1842, in the case of Bidadhur Misser, plaintiff, *versus* Bissessur Pauray, and others, defendants.

It is hereby certified that the said application is granted on the following grounds :

Plaintiff, on the 17th April 1837, purchased at the master's sale, under decree of the Supreme Court, village Khoorea, pergunnah Sahseram, and, on going to take possession in the mofussil, was opposed by Runglal Bissessur, and the other defendants, who claimed the property under decrees of the principal sudder ameen's court, dated 1833 and 1835, passed in their favor in an action for recovery of possession brought by them against Sheodisht Pauray, Ram Ruttun Paurey, and others, who had mortgaged the village in July 1825, to one Hurnam Misser, who caused it to be sold on foreclosure of mortgage. Plaintiff, failing to get possession summarily, brought a regular action to set aside the decrees passed by the principal sudder ameen in 1833 and 1835, in which cases he was not a party concerned ; and the principal sudder ameen, with reference to those decrees, without enquiring into the collusion alleged by plaintiff to have existed between the parties in those cases, dismissed a portion [11 annas 3 pie,] of the claim to the village, decreeing the remainder [4 annas, 1 pie] in plaintiff's favor. This was upheld by the judge. It was incumbent on the principal sudder ameen to go into the case, and pronounce on its merits and the plea set forth in the plaint. This decision is clearly opposed to the Court's Construction No. 744, which declares that no execution of decree will hold beyond the right of the party against whom it may have been passed. The case is therefore admitted on the file, and returned for investigation into its merits as above indicated by the principal sudder ameen.

THE 25TH JUNE 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE NO. 10 OF 1842.

*Regular Appeal from the decision of Mr. R. E. Cunliffe, Acting
Judge of Midnapore.*

RANEE HURREE PREEA, AND AFTER HER DEATH, HER
ADOPTED SON, ROODERNURAIN RAI, PAUPER, APPEL-
LANT, (PLAINTIFF,)

versus

RAJAH LUKHEENURAIN RAI, RESPONDENT, (DEFENDANT.)

RANEE Hurree Preea instituted the present suit, in the late provincial court of appeal, for the division of Calcutta, on the 23d February 1829, to establish the right of Roodernurain Rai, whom she adopted on the 26th of Bhadon 1232, Umlee, to the half of the zemindaree, pergunnah Tumoluck, laying the action at rupees 1,58,275-12-15-2-2. She alleged that her husband, rajah Unundnurain Rai, on the 19th Sawun 1216 (Villaiut) granted permission, by two legal instruments, to her, and his other wife, Bishen Preea, to adopt sons, with power to renew the adoption, in the event of the death of those first adopted. Afterwards, in 1219, (Villaiut) the rajah adopted Sireenurain Rai for rance Hurree Preea, and the respondent for rance Bishen Preea, informing the judge and collector of the fact. He also executed four wills in favor of the wives and adopted sons, and died. Sireenurain Rai died in 1229. Hurree Preea informed the collector, that she was making inquiries respecting a proper person for adoption, and on the date above mentioned, adopted Roodernurain Rai.

The respondent denied the fact, that leave to adopt again, in the event of the death of those first adopted, had ever been given by rajah Unundnurain Rai. The deed alleged to have been executed

in 1216, is a forgery. The deed granted to respondent's mother is genuine, and is dated in 1218. No mention is made in this of successive adoptions. If the instruments had contained a condition of this kind, allusion would have been made to it, in the wills, which both parties admit to be genuine. The rajah too, would have mentioned this condition, when he informed the civil authorities of the fact of adoption. The appellant never filed the deed on which she founds her claim.

On the 19th December 1832, Mr. R. Martin, of the provincial court of appeal, rejecting the plaintiff's deed, dismissed the suit, but as he had not examined the witnesses to the deed, the case was sent back for re-investigation by Mr. R. Walpole, on the 7th August 1833. Afterwards on the abolition of the court of appeal, the case was transferred to the file of the judge of Midnapore, and owing to other causes of delay, the case was not decided until the 25th March 1841, on which occasion, Mr. R. E. Cunliffe, for the reasons set forth in his decree, dismissed the suit, with costs.

The question for consideration, in this case, is, whether the deed of 1216, or that of 1218, is to be accepted as genuine? The allegation of the appellant, is, that a deed similar to that produced by him, was executed in 1216, in favor also of Bishen Preea, the mother of the respondent, and the inference is, that the true deed has been suppressed, and the one alleged to have been executed in 1218, substituted for it, by the respondent. A similar allegation, and a similar inference as to the falseness of the deed of 1216, are made by the respondent. The question is one entirely of probabilities; and after the best attention we have been able to give to it, we are of opinion, that the probabilities are in favor of the genuineness of the deed of 1216. Before we proceed to enumerate those probabilities, it is necessary to examine the chief reasons given by the judge for rejecting the deed of 1216. These are, that that deed is not properly proved, and that the deed of 1218 is; that if there had been a permission given to the wives to adopt successively, this circumstance would have been mentioned in the wills, and made known to the collector; that if the deed of 1216 had been genuine, ranee Hurree Preea would have produced it after the death of Sireenurain, which she never did. With respect to the point of the deed not being properly proved, it is stated, that the only two signing witnesses, who are alive, deny all knowledge of it: that of the witnesses who were present, and who speak to the execution of the deed, some are younger than they say they are, some are under the influence of the plaintiff, and there are discrepancies in the evidence of others; that the seals of the deed of 1216, and those of the wills don't tally; but that the seals of the wills and those of the deed of 1218 do. As to these remarks, it is worthy of notice, that the appellant objected to have the evidence of the only two signing witnesses, taken, on the ground, that they were in

collusion with the opposite party. This throws great suspicion on their testimony, and one of them, Doolal Sirdar, who was a witness to the wills, in which there is a distinct reference to deeds of permission to adopt, denies all knowledge of there having been *any* deeds of permission to adopt. No reliance can be placed on such testimony. The test of witnesses looking younger than they say they are, is a very unsafe one. Moreover, it is improbable, that a plaintiff even if intending fraud, should not guard against any extraordinary discrepancy on the score of age, when summoning a witness to speak to transactions, that happened nearly 30 years before. With respect to the discrepancies and influence alluded to, we cannot discover, that the evidence in favor of the deed of 1216 is not quite as good as that in favor of the deed of 1218; and though, perhaps, the seals of the deed of 1216 are not the same as those of the wills, (though it is difficult to speak positively on a point like this,) such a circumstance does not prove the deed of 1216 to be a forgery, as different seals may have been used. The omission in the wills, of the mention of the power to adopt successively, is not conclusive against the fact that such a permission was given. There is a reference in the wills, to the deeds of permission to adopt; and the conditions of those deeds would stand, though the testator bequeathed his property to those who were alive at the time he wrote the wills. Indeed the very reference in the wills, to the deeds of permission to adopt, is in favor of the genuineness of the deeds of 1216, for if the deeds of 1218 were the true ones, it is scarcely conceivable why a reference to them should have been made at all, those deeds making mention only of one son to be adopted by each wife. If the rajah himself adopted sons within six weeks from the date of the supposed execution of those deeds, which he did, what reason could he have for referring to them at all? On the supposition, however, that a power had been granted to his wives, to adopt successively, there is an obvious reason for referring to the deeds, though he adopted the sons himself, because that reference *confirmed* the power he had given to his wives. With respect to the argument against the deed of 1216, from the fact of its not having been produced by Hurree Preea on the death of Sireenurain, it is not of much weight. People in this country, when they put forth a claim, are not in the habit of producing the proofs they may have in support of their claim, until the proofs are called for. The argument, besides, cuts both ways. It may be asked with equal justice, why the respondent, during the long continued litigation of a summary kind, which took place after the death of Sireenurain, did not produce the deed of 1218, to disprove the claim of Hurree Preea to adopt another son? Having thus attempted to show the insufficiency of the judge's reason for rejecting the deed of 1216, we will now point out, why we think this deed is to be preferred to

the other. It is admitted by both parties, that rajah Unundnurain Rai had lost a great many children, and it seems natural, under these circumstances, that when authorizing his wives to adopt sons, he should have provided for the contingency of both the sons dying. Again, in both deeds it is stated, that Unundnurain Rai was going on a pilgrimage. Both parties allow, that he did not go on a pilgrimage. It is established by the wills, which both admit to have been written, and which must have been written, as notice of their execution at the time of execution, was given to the collector, that the sons proposed to be adopted by Unundnurain were brought home, and seen by him, and approved of, on the 22nd of Sawun 1218. The deed of permission to adopt, of 1218, is dated the 10th Assar. Here two points for consideration are suggested. Is it probable, that in the short space of six weeks, not only the plan of the pilgrimage should have been given up, but the nice and delicate arrangement of choosing two sons for adoption completed? In the second place, the adoption, was, after all, made by Unundnurain himself. It seems highly improbable, if he were in a position, by the 22nd of Sawun 1218, to have completed all the necessary inquiries, and to have overcome all the difficulties, connected with the choice of sons, that he should have executed, in favor of his wives, deeds permitting them to adopt sons, only six weeks before he adopted sons himself. Neither of these objections applies to the deed alleged to have been executed on the 16th Sawan 1216. In two years from that date, there was time enough to give up the plan of the pilgrimage, and to discover fit children for adoption. There is another circumstance in favor of the truth of the appellant's statement. Immediately after the death of her adopted son, Sjreenurain, in 1229, Hurree Preea gave notice of the fact to the collector, stating that she had not yet made choice of another son, but that she was making the necessary inquiries. On the same day, a petition was presented to the collector, on the part of Bishen Preea. The object of this petition was to have her son's name registered jointly with that of Hurree Preea, in the collector's books. No objection is made to the claim of Hurree Preea to adopt again. It is said, no doubt, by the opposite party, that the attorney who filed this petition, was in collusion with Hurree Preea. Not only is there no proof of this, but we think had such collusion existed, an admission stronger than mere silence, of the claim of Hurree Preea to adopt again, would have been contained in Bishen Preea's petition. Hurree Preea never receded from her claim to adopt again. Accordingly, when she at last adopted Roodernurain, she sent notice of the fact to the collector, and when an attempt was made, in the judge's court, by the respondent, who had come of age, to set her aside from the management, she resisted the attempt by stating that she had adopted Roodernurain, agreeably to the power of successive adoption granted to her by her deceased husband. We

think too, that the circumstance of the deed of 1216, bearing the name of Mr. John Shakespear, is strongly corroborative of its genuineness. By Regulation XIII. of 1806, it was provided that all stamped paper should be authenticated by the signature of an officer employed under the superintendent of stamps. This provision continued in force until rescinded by Regulation VII. of 1809. By a reference to the present superintendent of stamps we learn, that Mr. John Shakespear began to authenticate stamps under the superintendent, about July 1807. Regulation VII. of 1809 was passed on the 4th August 1809, or 22d Sawan 1216, (Villaint.) The deed of 1216 is dated the 19th of Sawan. If this deed be a forgery, it must have been forged subsequently to the death of Sireenurain in 1229, for there is no conceivable object in forging it before. But to procure after a lapse of so many years, a piece of blank stamped paper having Mr. Shakespear's signature on it, must have been next to impossible, as he was employed in authenticating stamps only for two years, and all the stamped paper authenticated by him must have been used for deeds, long before the year 1229. That the signature of Mr. Shakespear is genuine we have no doubt, that signature being a very peculiar one, and familiar to Mr. Tucker. We are of opinion also, that the efforts made on the part of the respondent, to get the better of Hurree Preea, and the intrigues that were apparently carried on in the revenue department for that object, speak in favor of the lady's right. First of all the opposite party appears to have claimed the whole estate, even during the life of Hurree Preea, alleging that she had executed a deed of renunciation in favor of the respondent. That this was a purely fraudulent plea, seems obvious, from the fact, that the deed was never produced, and from the circumstance that such an alienation was entirely at variance with Hurree Preea's repeatedly urged claim to adopt another son. Another proof of the existence of intrigue, is the opinion called for by the Court of Wards, from the pundit of this Court, regarding Hurree Preea's right to adopt another son, without any previous inquiry as to the ground on which she claimed that right. The order passed by the collector, on the petition of Hurree Preea, announcing that she had adopted another son, is indicative of the efforts that were made by the omlah, to advance the interests of the opposite party. This petition is dated the 27th Bhadon 1232. It had been sent to the collector by post. Two courses were open to the collector, on such an occasion. He might either have ordered, that the petition should be filed in the records of his office, which is the proper plan to follow, when a petition is not presented in due form; or he might have summoned Hurree Preea's attorney, and investigated her right to adopt. Neither of these courses was followed, but a reference being made to the records of the office, an *ex parte* opinion was given against Hurree Preea. There is another striking proof,

of the aid that was apparently given by the collector's omlah, to bolster up the respondent's claim. It consists in the agreement that was taken from Hurree Preea, and the respondent, Lukheenurain, when the estate was released from the jurisdiction of the Court of Wards. This deed is called a dowl kubooleet, and is dated the 20th Aghun 1233. It is signed by the attorneys of Hurree Preea and Lukheenurain. In this deed, Hurree Preea is described as giving up all claim to alienate her share of the property, during her life. Now in the first place, a requisition on the part of the Court of Wards, that the lady should come under such an agreement, is one altogether beyond their jurisdiction; and as no order to the collector, requiring him to have such a contract entered into, is forthcoming, it is to be inferred, that the clause was fraudulently inserted by the omlah. In the second place, as Hurree Preea had already adopted another son, and as she a few months after the alleged execution of the kubooleet, again contended in the judge's court, that she had adopted a son, it is impossible to believe, that she authorised her consent to be given to the above deed. In like manner, and with reference to the same circumstances, it is incredible, that Hurree Preea should have authorized her attorney, to sign for her a joint petition with Bishen Preea, on the 27th December 1823, or 14th Poose 1231, in which she recognizes the respondent, as the proprietor of the whole estate, when he should come of age. With reference to all the above mentioned reasons, and bearing in mind the strong inducement to fraud, which the position of the respondent held out to him, after the death of Sireenurain, and the general unscrupulousness of the natives of this country, when placed in such a position, we are of opinion, that the claim of the appellant, founded on the genuineness of the deed of 1216, is good. We accordingly decree for him, with costs, reversing the decision of the judge. We also decree possession to the appellant of half the zemindarry.

THE 25TH JUNE 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 476.

IN the matter of the petition of Sheoburn Sing, filed in this Court, on the 29th June 1844, praying for the admission of a special appeal from the decision of the judge of Shahabad, under date the 29th March 1844, affirming that of the principal sudder ameen of

Shahabad, under date 28th July 1842, in the case of Bidadhur Misser, on his demise Surnam, plaintiff, *versus* Bissessur Paurey, Sheoburn Sing, Sheodisht Paurey, and others, defendants.

It is hereby certified that the said application is granted on the following grounds:

Petitioner purchased, in execution of decree of the principal sudder ameen, passed in favor of Runglall, and others, *versus* Sheodisht Paurey and others, the share of the defendants, and others [4 annas 1 pie] of village Khoorea. The circumstances under which petition No. 471, on the part of Bidadhur Misser (in which the remainder of this village is litigated, as well as the above mentioned share) has been admitted, are set forth in the certificate of special appeal attached to that petition. As the Court have declared the investigation held by the principal sudder ameen in the case of Bidadhur Misser, and others, *versus* Bissessur Paurey, and others, to be incomplete, and ordered a re-trial, the proceedings in execution of his decrees of 1833 and 1835 in the case Runglall, and others, *versus* Sheodisht Paurey, the validity of which are involved in the result of the suit remanded for re-trial, must be held in abeyance.

Petitioner's appeal must be disposed of in connexion with the special appeal of Surnam Misser No. 471.

ORDERED,

That a copy of the Court's proceedings in the said case No. 471, be annexed.

THE 28TH JUNE 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

AND

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 479.

In the matter of the petition of Isher Chunder Mustofee, filed in this Court, on the 1st July 1844, praying for the admission of a special appeal from the decision of Mr. G. C. Cheap, judge of zillah Rajshahye, under date the 26th March 1844, confirming that of Moulvee Abdool Alli, principal sudder ameen of that district, under

date the 31st December 1842, in the case of Gungapershad Bhanee and others, plaintiffs, *versus* Ishurchunder Mustofee, defendant.

It is hereby certified that the said application is granted on the following grounds:

The plaintiff sued to recover a sum of money alleged to have been advanced by him to Mohesh Chunder, the defendant's naib, to pay the defendant's rents, and got decrees in both courts. The Court are of opinion that the heirs of Mohesh Chunder, naib, (he being dead,) not having been made parties to the suit, the action will not lie against the defendant alone, and should have been nonsuited. They therefore return the case to the judge, and direct that he refer it back to the principal sudder ameen, with instructions, in the event of the plaintiffs putting in a supplementary plaint against the heirs, to decide the case in their presence: otherwise to nonsuit the plaintiff.

30TH JUNE 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 163 OF 1843.

Regular Appeal from a decree of the Principal Sudder Ameen of Sarun, passed 21st April 1843.

ZALIM SINGH, AND EIGHT OTHERS, APPELLANTS,
(DEFENDANTS,)

versus

SHAIKH TUFUZL HOSEIN, RESPONDENT, PLAINTIFF.

THIS suit was instituted on the 28th July 1842, by respondent, to recover from appellants possession of mouzah Bhurtooe, in pergunah Puchluk, with exception to sixty beegahs of land, and wasilat, or mesne profits, from 1246 to 1249 Fuslee; the whole, principal and interest, estimated at rupees 5,152-7-11.

The plaint sets forth, that the estate of Bhurtoec was the hereditary property of Ram Churn Roy and Bikram Roy, who mortgaged the same to plaintiff (respondent) with exception to sixty beegahs, cultivated by themselves, for one thousand rupees, on the 29th August 1835. The money was to be repaid on or before the full-moon of Aughun 1243 F. The deed was duly registered. The money not having been paid, a notice was issued to the sellers under Regulation XVII. 1806, but without effect. Plaintiff then sued for possession; and, on the 18th September 1837, obtained a decree. On proceeding to take possession under this decree, the present defendants (appellants) opposed plaintiff, asserting that the estate had been the property of their forefathers, and that the sellers to him had no rights or interests in it whatever. On the 28th November 1838, their claims and protests were rejected; and an ameen was, for the second time, deputed to give over the estate to plaintiffs; but without success. After this, plaintiff tried various expedients to accomplish his object, but all his attempts, whether regularly or summarily brought before the courts, were unavailing, and ended in instructions from the zillah judge to bring an action against the defendants for possession. This the plaintiff now does, claiming at the same time mesne profits from 1246 to 1249 Fuslee. The plaint goes on to say, that the defendants have no right whatever to these lands: they assert they purchased them from Tuket Roy and Chet Roy, ancestors of those who sold them to plaintiff, for 300 rupees; but the fact is, that in 1197 Fuslee the estate was let in farm for ten years to defendants' ancestors, whose names, in 1207 Fuslee, were struck out of the collector's books, and the names of those from whom plaintiff purchased substituted; from which time those persons and the sellers themselves, have held possession.

The defendants admit, that the names of the ancestors of the sellers were, as stated by plaintiff, recorded in the collector's books; but they add, that the mere registry of names confers no rights, and in this instance was resorted to under particular circumstances: these ancestors were servants to *theirs*; and in consequence of disputes which took place between the different sharers of the estate it was found convenient to get them recorded as farmers and proprietors, but they never had any rights in the property. This practice obtained generally at the time. The former decree obtained by plaintiff was so obtained through collusion, and they (defendants) had no knowledge of the proceeding.—The remainder of the answer has reference to judicial and revenue matters, not affecting the question of proprietary right to the estate.

The principal sudder ameen concludes a long proceeding, composed of assumed inferences and extraneous matter, altogether irrelevant to the points he was called upon to determine, with the following judgment: "In this case the court have only enquired

into the *rights* of the plaintiff; since the suit was instituted the estate has been sold for arrears of Government revenue, and the plaintiff may either take the surplus proceeds of sale, less the value of the 60 beegahs not included in his claim, or if he deem the sale to have been illegally made, he may institute an action for its reversal; on the other hand, if the defendants have any claim for advances on their part, they may bring their suit for the same." Wasilat was disallowed.

The Court, under the circumstances of this case, must confine themselves to a declaration of the plaintiff's right to the estate, upon which he held a mortgage from the former proprietor Ram Churn. The lands having been sold to a third party, since the institution of the suit, for balance of revenue accruing on them, he cannot be put in possession. The principal sudder ameen's order, which declares the proprietary right to be vested in the plaintiff, is affirmed, with costs charged to appellants.

THE 30TH JUNE 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 263 OF 1843.

Regular Appeal from Principal Sudder Ameen of Bhagulpore.

MUNGUL SING, ON HIS DEMISE, RAM ADHHEEN SING AND
ROOP NARAIN SING, APPELLANTS, (DEFENDANTS,)

versus

MR. PETER ONRAIT, RESPONDENT, (PLAINTIFF.)

THIS plaint was filed on the 24th January 1838, and sets forth, that a moiety of talook Bikrampore Chukramee, in Pergunnah Chyee, the property of Chowdree Sham Sing, fell into the hands of sundry

persons by public and private sale. The moiety of village Lokmanpore, alias Narainpore, and moiety of Mouzimabad, the share of Sham Sing, belonging to the said talook, were bought by Byram Sing, who held it up to 1242 Fusilee. The proprietors of the above moiety of talook Bikrampore, it being an undivided estate, failed to pay the Government revenue, and it was sold by the collector, on the 17th December 1835, for arrears, and bought by the plaintiff, who, on being about to take possession of his purchase, was opposed by the defendant Mungul Sing, the proprietor of village Sawoot Tuppah Bhoorsa in Pergunnah Furkeea; who, under cover of a miscellaneous order of the civil court, prevented plaintiff's entering on two plots, containing 301 biggahs 5 cottahs, situate in village Lokmanpore. Recourse was had to the criminal court; and plaintiff, on being ordered to sue regularly for possession, instituted the present action.

The defendants answered as follows: Musst. Doorgabuttee, wife of Abdool Sing Chowdree, claimed the lands in question (which belong to village Sawoot Tuppah Bhoorsa, our zemindaree) as appertaining to villages Mouzimabad and Lokmanpore, which were her property. The question was referred for arbitration, and was for some time pending in the civil court, and at length we were put in possession of them by the judge's nazir, and still hold them. Plaintiff bought the talook called a moiety of Bikrampore Chukramee, but these lands were never in the possession of the former zemindars, and plaintiff, who only purchased their rights, cannot, at this distant period, claim them. He petitioned the deputy collector with the view of getting possession of hundreds of beegahs belonging to us, as though they were in Mouzimabad. The deputy collector attached the crops on these lands: we filed a plan before him, which the plaintiff's mooktear, Kirparam, admitted, and the deputy collector, on the 6th July 1836, dismissed plaintiff's claims, and gave up the crops to us. The lands were marked off by bamboos, and we hold them as before. Plaintiff however still disputed possession, in consequence of which we presented a petition in the fouzdarree court, when the darogah was ordered to prevent plaintiff's interference with our lands. Upon this plaintiff appealed to the commissioner, who called for the papers and went to the spot; and, after personal enquiry, confirmed the proceedings of the deputy collector and the magistrate, on the 8th February 1837. Plaintiff again applied to the fouzdarree court; and his plaint was dismissed on the 5th January 1838, and trees, 8 cubits in height, were planted to mark off the boundary.

Plaintiff, in reply, states that the plea of the former proprietors not having had possession of the lands in question will not avail the defendants, as he, plaintiff, is a purchaser at public sale. Plaintiff further denies that Kirparam admitted the plans filed by the defendants.

The principal sudder ameen, on the 9th September 1843, recorded his judgment as follows:

This action was dismissed on the 8th September 1838. On appeal to the judge, that officer, on the 30th November following, divided the contested lands equally between the parties, on the ground that one Jyeram had got a lease of them from both parties, and it was difficult to ascertain their rights. He ordered that Mungul Sing should retain possession of them till the end of 1246, as Byram Sing had held them for a certain period under an order of the court, dated the 15th January 1835. At the expiration of the period allowed for Mungul Sing's possession, an ameen should be sent to give both parties possession of half shares.

A special appeal was preferred to the Sudder Dewanny Adawlut, when the case was remanded for further investigation. An ameen, Mahomed Aleem, was deputed to make local enquiries; and he filed his report on the 23d June 1843, to the effect that he was unable to ascertain the boundary line which divided pergunnahs Furkeca and Chyee. Some witnesses deposed that on the lands arising from the bed of the river, both parties cultivated them to the extent which they considered their right; but the decision of the case, he was of opinion, rested altogether on such documentary evidence as might be on the record. The principal sudder ameen held that nothing was produced to support or reject the claim of either party, and no boundary could be ascertained, and that it would be equitable, under these circumstances, to divide the lands according to the judge's decision of 1838, and to give half shares, viz. 150 biggahs 12 cottahs 10 chittacks to each of the litigants.

The plaintiff claims the lands in litigation as belonging to village Lokmanpore, appertaining to Pergunnah Chyee; he fails to shew what was the boundary line of Pergunnah Chyee, within which these lands are said to be situate; and until this be determined his claim cannot be admitted. The Court therefore dismiss the plaint, with costs of both courts chargeable to him.

THE 30TH JUNE 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

NO. 264 OF 1843.

*Regular Appeal from the decision of Principal Sudder Ameen of
Bhangulphore.*

MUNGUL SING, ON HIS DEMISE, RAMADHEEN SING AND
ROOP NARAIN SING, APPELLANTS, (DEFENDANTS,)

versus

MR. PETER ONRAIT, RADHAMADHUB BANORJEA,
AND MR. FREEMAN, PURCHASER FROM RADHAMADHUB,
RESPONDENTS, (PLAINTIFFS.)

THIS plaint, filed on the 8th December 1837, being to a certain extent connected with case No. 263 between the same parties, the Court deem it expedient to enter upon the investigation of both cases at the same time. Plaintiffs sue for possession of 635 beegahs in village Mouzimabad, one half of which, the share of Kalissor Sing and others, was purchased at sheriff's sale in 1837 by Radhamadhub Banorjea, and the other half the share of Sham Sing, previously, in 1835, at public auction, by Mr. Onrait, for balance of Government revenue due on Sham Sing's talook, the moiety of Bikrampore Chukramee. They go on to state, that talook Bikrampore Chukramee in Pergunnah Chyee, and Tuppah Bhoorsa in Pergunnah Furkeea, adjoin. In 1207 Fusilee, Abdhoot Sing, uncle of Choudhree Sham Sing, being apprehensive that the boundary of village Mouzimabad, which then formed the line of demarcation between the two above pergunnahs, would be obliterated by the incursion of the river, applied to the civil court to have the boundaries of the two pergunnahs marked off by an aameen. Upon which Bakur Allee was appointed, and filed his

report on the 22d Jheyte of that year. This was attested by the zemindars of both pergunnahs. After this, the whole of the lands adjoining to Mouzimabad were washed away. Choudree Abdhoot Sing died. In 1215 these lands were again thrown up, and disputes arose between Doorgabuttee, widow of Abdhoot Sing, and the dependant zemindar of Tuppah Bhoorsa; the result of which was an arbitration engagement, by which both parties bound themselves to abide by the award of the arbitrators.

About this time, Sham Sing sued Laljee, the guardian of Kalissor and Zalin Sing, the two minor sons of Abdhoot Sing, to recover his half share of talook Bikrampore Chukramee, and obtained a decree in the Sudder Dewanny Adawlut. Radhakishun, an aumeen, was appointed by the collector to divide the talook into two equal shares. This was in 1223. The aumeen measured the lands now disputed also, and gave them in half shares to the parties, recording them as disputed lands. Each sharer held accordingly up to 1231. In 1232 the boundary line again became the subject of dispute, and the moonsiff of Lokmanpore was ordered to mark off the boundary. The question remained under arbitration till 1236. The matter was again brought before the foudaree court, and the plaintiffs were directed to sue in the civil court to establish their right.

THE ANSWER OF MUNGLE SING:

‘It does not appear what has become of the aumeen’s plans, if he ever filed them. The plaintiffs refer to measurement, but do not distinctly specify the boundaries of the lands claimed. The fact is, the lands now claimed have never been the subject of dispute. About 300 begahs belonging to village Sawoot Tuppeh Bhoorsa, my zemindaree, were under arbitration; but the lands now claimed are in no way connected with them. On one occasion Byram Sing sued one of his servants in the foudaree court, alleging the lands appertained to Lokmanpore, they were attached by the darogah, with the others then contested, but eventually the magistrate, on the 18th January 1833, released them, declaring that they were not part of the lands in arbitration. Plaintiffs’ estimate of the produce is overrated; much of the land is uncultivated. When the plaintiffs’ case was before the deputy collector, we filed a map, which their moktear, Kirparam, admitted. Their case was dismissed and the lands were marked off, and the crops made over to us.’

REPLY OF PLAINTIFFS:

‘What the defendants say as to the aumeen having made no map, is not to the point.

There was no occasion for a map; no cause was pending in court. The aumeen was sent merely to draw a boundary line for

the purpose of preventing further disputes. Defendants object to the ammeen's measurement papers; call them incomplete, and unworthy of credit: they have not been filed, how can they refer to them? That these papers were produced will appear from the commissioner's roobookaree and the foudaree record. Plaintiffs deny that Kirparam ever admitted the map put forward by the defendants.'

The principal sudder ameen, on the 9th September 1843, took up this case and disposed of it in connexion with case No. 263, between the same parties, and decided it on the principle on which he decided the last mentioned case. He was of opinion that neither party had established their claim; and as no boundary could be determined between Pergunnahs Chyee and Furkeea, he awarded one-third of the contested lands to the defendants and two-thirds to the plaintiffs. When this case was in appeal before the Court in 1840, Mr. Lee Warner, one of the judges, remanded it for further investigation, with orders that the quantity of land, and its boundaries, should be ascertained. His proceedings are dated the 15th of June of that year; and the appeal now before the Court is against the decision of the principal sudder ameen, consequent on the re-trial of the case.

The Court observe, that the plaintiffs are unable to point out what was the original boundary of Pergunnah Chyee, and fail to prove that the lands now sued for fall within the boundary; which must be determined ere their claim can be admitted. Moreover, half of the land sued for was acquired at sheriff's sale by purchase of rights of former proprietors, who, it is clear from the record, have been out of possession for a period greatly in excess of that allowed for the institution of an action by the statute of limitations.

Under the above circumstances, the Court dismiss the plaint, and direct that the costs of both courts be charged to the plaintiffs (respondents.)

THE 2D JULY 1845.

PRESENT:

R. IL. RATTRAY,
JUDGE.

CASE No. 146 OF 1844.

*Regular Appeal from a decision of the Judge of Tirhoot, David
Pringle, passed December 27th, 1843.*

WAEZ ALI, APPELLANT, (PLAINTIFF,)

versus

BIBI ZAHEDAH, BIBI ASSOUEH, AND UTHUR ALI,
RESPONDENTS, (DEFENDANTS,)

and

BUNDEH ALI, MUSST. KUDRUEE, MOULA BUKHSII, AMEER HOSEIN, and MOHUMMUD ZUMEER,	}	Defendants, but not named as Respondents in the appeal suit.
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THIS suit was instituted by appellant, on the 21st December 1840, to recover from respondents, and others (defendants) two hundred beegahs of land in mouzah Makhei, in lieu of the same quantity purchased from the proprietor of Makhei, from which appellant has since been ejected. The value of the land estimated at Company's rupees 1,297-15-1.

On the 8th of Kartick 1225 F., a cowaleh, or deed of sale, was executed, in favor of Noroz Ali, the son of appellant, by Shah Hosein Ali, for himself and on behalf of Bibi Buhoorun and Bibi Fatima, (widows of Ahmud Hosein) Bibi Zahedah and Bibi Assoueh (daughters of ditto, and the former the wife of Hosein Ali) by which the estates of Alinuggur and Tej were sold for the sum of Sicca rupees 7,301; the payment of which was acknowledged by the deed, and the signature, (by seal) of all the persons named, affixed to it, in assent to the transfer.

On the same date, the 8th Kartick 1225 F., an ikramaneh, or deed of agreement, was entered into by the same parties, to the effect, that, should any thing occur to prevent the fulfilment of the bargain made in regard to Alinuggur and Tej, the purchaser, Noroz Ali, should have the choice of any other estate of equal value possessed by the sellers in lieu of those thus conditionally purchased;

and if any demur should be made, the ikrarnameh thus granted was to be considered, and to have the same force, as a cowaleh or deed of sale. This paper bears an illegible impression said to be the seal of Hosein Ali (deceased); but there is nothing whatever on the part of the other persons whose names are to the cowaleh, to shew that they were parties to it; which again is denied, and at the same time its validity impugned, as wanting such concurrence. The execution of the deed is sworn to by four witnesses, in whose presence Hosein Ali acknowledged it.

In 1831, one Mukdoom Bukhsh obtained a decree for a sixth portion of Alinuggur; and in virtue of the above ikrarnameh, appellant claims two hundred beegahs of the estate of Makhei: but besides the absence of assent just noted, other obstacles oppose this. The respondent Uthur Ali asserts, that he had already purchased, from Bibi Assooch, a fourth share of that estate; Moulah Bukhsh claims another fourth, as purchased by him from Bibi Zahedeh and Hosein Ali, four years before the present action was brought against him; and Mohumud Zumeer comes forward with a decree of court for the remaining moiety, also antecedent to the date of the deed on which appellant rests his claim. None of these are disproved.

With reference to the above facts and circumstances, the zillah judge dismissed the suit; and on the same grounds, nothing appearing in appeal to affect the propriety of the judgment, it is hereby affirmed, with costs payable by appellant.

THE 3D JULY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 263 OF 1844.

*Regular Appeal from a decision of the Judge of Shahabad,
W. S. Alexander, August 10th, 1844.*

MOOSSUMAT IMRUT KONWUR, APPELLANT,
(PLAINTIFF,)

versus

MOOSSUMAT JEEUN BIBI, AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

THIS suit was instituted by appellant, on the 6th July 1843, to recover from respondents the sum of two thousand nine hundred

and seventy-four rupees and ten annas [Co.'s Rs. 2,974-10-0] principal and interest, arrears of rent due from the 1st Magh 1248 to the end of 1249 Fuslee, on mouzals Ekwarce and Bungatee, pergunnah Ninor.

Appellant is the widow of Birj Bhookun Das, who held the lands, the rent of which is claimed by her, under a mortgage deed from the proprietor. In 1246 F. Birj Bhookun Das had let them in farm, for ten years, to Khyrodeen, the husband of the respondent, Jeeun Bibi; one of the stipulations being, that, should an arrear of rent occur, the lessor should have the power of appointing a suzawul, or manager, to superintend the collections. Soon after this Birj Bhookun Das died, and appellant succeeded to the estate, as held by her husband. In 1248 F. Khyrodeen died: and immediately upon this, no arrear being due, a suzawul was deputed by appellant, by whom respondents were altogether superseded in the management of the farm, and the superintendence of those conducting the duties of it. A proclamation was issued, directing all rents to be paid to him; all farm payments were ordered to be made to and by him; he expended money at will, and without consulting respondents, for embankments and other works; and, from the date of his appointment, respondents had no voice in or control over the acts of those forming the establishment of the farm, in regard to either receipts or disbursements. The only inference to be drawn from this, was, that appellant had taken the entire management into her own hands; but it was established, further, that she had actually granted a lease of these lands to another party, who had sued and recovered rent from the ryuts for the year 1249 F.; for which year, and for rent on which same identical lands, respondents were now sued in the case before the court.

With reference to the facts and circumstances above detailed, the zillah judge dismissed the suit; and on the same grounds, nothing new appearing to alter the view before taken of the case, the judgment appealed against is affirmed. All costs to be paid by appellant.

THE 5TH JULY 1845.

PRESENT:

J. F. M. REID,

JUDGE.

PETITION No. 636.

IN the matter of the petition of Ram Nurayn Dobeh filed in this Court, on the 13th August 1844, praying for the admission of a

special appeal from the decision of Moolvee Mahomed Majid, principal sudder ameen of Bhagulpore, under date the 14th May 1844, confirming that of Lala Data Ram, moonsiff of Soorujgurra, under date 5th December 1843, in the case of petitioner, plaintiff, *versus* Jugurnath Dobeh, defendant; it is hereby certified that the case is referred back for re-trial on the following grounds.

On a suit by the petitioner against the defendant, his brother, for possession of $\frac{1}{3}$ d of an invalid jaghere granted to their grandfather, because the defendant had been excommunicated from his caste, because he, a Bramin, cohabited with a Mussulman woman. The moonsiff nonsuited the plaintiff, and directed him to have the dispute decided by a punchayt. The principal sudder ameen confirmed this order. It was the bounden duty of the moonsiff to have decided the question whether the defendant had, or had not, lost his claim to hold the property by the fault alleged against him. Let the case be sent back with instructions to the moonsiff to restore it to the file, and decide it on its merits. If he deem it absolutely necessary that it should be decided by a punchayt, and the parties will not consent to this measure, the moonsiff should refer the case to the judge, who can, under Regulation VI. 1832, of his own authority, call in the aid of a punchayt and decide the question. Usual order passed for the return of the stamp on which the petition of appeal is written.

THE 8TH JULY 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 78 OF 1844.

Regular Appeal from the decision of the 2d Principal Sudder Ameen of Jessore.

SUMBHOO CHUNDER DASS, (DEFENDANT,) APPELLANT,

versus

RASMONEE DASSEE, WIDOW OF RAJ CHUNDER RAY,
(PLAINTIFF,) RESPONDENT.

PLAINTIFF states her father-in-law, Peritram Ray, bought per-gunnah Mokeempore at public sale for Government balances in 1207. On his death, her husband succeeded to his father, and she now

claims, in right of her husband, possession of the julkur, right of fishery, in the rivers Modhoomotee and Athara Bankee. This julkur, it is alleged, was annually let out, under the agreement that the farmer at the close of the year was to relinquish it. A jumma called "bhar in jumma" was not included in the farm. In 1247, the defendant took the julkur at 6,446 rupees, 15 annas, 15 gundas, on the security of Nund Komar Deyoo and others; when the year expired plaintiff let the julkur to Petumber Dass and others for 1248, for 8,446 rupees, 15 annas, 15 gundas. Defendant, on this, applied to the foudaree court, saying, in 1208 my father-in-law had entered into an engagement with his (defendant's) father to give him the julkur year by year, and that Ram Mohun Ghose, my naieb, in 1244, gave him a pottah at 6,045 rupees jumma to be continued at that rate. The magistrate was of opinion that the case did not come within the provisions of Act IV. of 1840; but upheld defendant's possession. The julkur was let out to others (as proved in the suit in the foudaree court) in 1207, not to defendant's father. If the defendant was to continue to hold possession from year to year, one pottah would have sufficed; notwithstanding this the jumma of the julkur has frequently been increased and fresh pottahs have been given. My naieb had no authority to make any settlement with the defendant at 6,045 rupees. I therefore sue for possession, estimating the value of the julkur at 20,000, its annual profits at 4,500, being 24,500, for reversal of the magistrate's order, and for wasilat with interest up to date of regaining possession.

Answer of the defendant, Sumbhoo Chunder Dass :—

The amount of this action is not properly estimated according to Schedule B. Regulation X. of 1829. From 1208 the julkur mehal has all along been in the possession of my father and myself, as shewn in the foudaree suit under Act IV. of 1840. The settlements with Rampersaud in 1208, and with Chedam in 1229 are false. My brother Ram Kishen Dass' possession in 1229 is proved by plaintiff's documents in the suit of the zemindars of Koororeea *versus* the present plaintiff.

The julkur of Phoolooee Bund Khal and the Bhasan julkur were included in my julkur in pergunnah Mokeempore with the sanction of plaintiff's ancestor, and annual settlements are made for them regularly. The reason of this is the julkur jumma varies constantly. I am entitled to hold possession, as it was agreed that an annual settlement should be made with me.

The Principal Sudder Ameen, 30th October 1843 :—

The defendant states the julkur was annually settled with him; this cannot affect plaintiff's claims. He does not plead a permanent settlement was ever made with him; and though he has been in possession for a long period, he has no right to a permanent settle-

ment. Defendant puts in a pottah, which, however, is disproved by his kaboleut given to the plaintiff, duly supported by evidence. If however defendant's plea is valid, it is incumbent on him to renew his engagements with plaintiff. The farm for 1247 has expired, no fresh settlement has been made by the parties respectively. The jumma from 1208 has constantly varied, which proves some annual agreement was necessary. Ram Mohun Ghose, plaintiff's naieb, had no authority to make a settlement in 1244 at 6,045 rupees with the defendant. Plaintiff's documents shew settlements have been made with others, as well as with the defendant, for the contested julkur. I therefore reverse the magistrate's orders, decree possession to plaintiff with wasilat to be fixed, and interest thereon to date of her regaining possession.

BY THE COURT.

The respondent sues to recover possession of a julkur, which the appellant claims to hold with right to renew his engagement year by year. This right the respondent denies and alleges the farmer, be he who he might, at the close of each year resigned his tenure, and it was open to respondent to enter into engagements with any party she pleased. The appellant fails altogether to prove his right of renewal of the pottah annually, at pleasure; he produces no engagement from respondent to that effect. On the contrary, he admits having obtained fresh pottahs at various periods on enhanced jumma, and respondent shews the farm of the julkur has immediately been let to others. The principal sudder ameen's orders are affirmed, and costs charged to the appellant.

THE 10TH JULY 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 214 OF 1843.

Regular Appeal from the decision of Principal Sudder Ameen of Beerbhoom.

JANOKEENATHI CHOWDREE, APPELLANT, (PLAINTIFF,)

versus

COLLECTOR OF MOORSHEDABAD, HUR MOHUN CHOWDREE, BONMALEE CHOWDREE, RAM CHUNDER CHOWDREE, AND OTHERS, ABSENT, RESPONDENTS, (DEFENDANTS.)

THIS action is laid at 6,526 Company's rupees, 2 annas, 3 pie. Plaintiff states he purchased the mehal Kismut pergunnah Barbuth Sing, the jumma of which is 2,105 rupees, 6 annas, 1 pie for 3,375 rupees at the collector's sale, on the 4th Assin 1247. A few days afterwards Hurmohun and others represented to the collector that the purchase was in a fictitious name; their petition was rejected; but on appeal to the commissioner, re-investigation was ordered, and the collector, after further enquiry, reversed his former proceedings, selling the mehal, and the commissioner confirmed these orders. Plaintiff further urges that the plea of a benamee purchase was not urged before the collector at the time of the sale. That Neel Kummul Mokerjea, the mokhtear of all the zemindars, the defaulters, offered him 600 rupees to have the sale reversed; that he rejected the offer; and that he bought the estate on his own account, and prays the sale may be upheld.

The collector, in answer, urges that on receipt of the commissioner's orders, he made a further enquiry, the result of which was a recommendation that the sale which had been made, should be cancelled on the ground that Radhakishen Chowdree, one of the defaulters, had made a fictitious purchase in the name of the plaintiff. The commissioner on this second report withheld confirmation of the sale; and, under such circumstances, the provisions of Regulation XI. of 1822, bar this suit.

The decision of the principal sudder ameen passed on the 22d December 1842, was as follows.

The point to be decided is, can an action be brought in the civil court to uphold a sale made by the collector for balance of Government revenue, which is disallowed by the commissioner? No sale can be said to have been effected till the commissioner has confirmed it. What right then has the plaintiff in this case acquired, since the commissioner's confirmation has been withheld? Under the rules in force, this suit, to cause the sale to be upheld, cannot be entertained. I therefore dismiss it with costs.

BY THE COURT.

The provisions of Section 24, Regulation XI. of 1822, clearly point out that the orders of the Board of Revenue for annulling a sale, under the circumstances therein indicated, on whatever ground, are conclusive. The case before the Court comes strictly within the provisions of the above section; and no action can, under the letter of the law, be entertained. The Court therefore dismiss the appeal with costs against the appellant in both courts, and affirm the judgment of the principal sudder ameen.

THE 10TH JULY 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 55 OF 1843.

*Regular Appeal from Principal Sudder Ameen of the
24-Pergunnahs.*

BIDENATH BOSE, APPELLANT, (PLAINTIFF,)

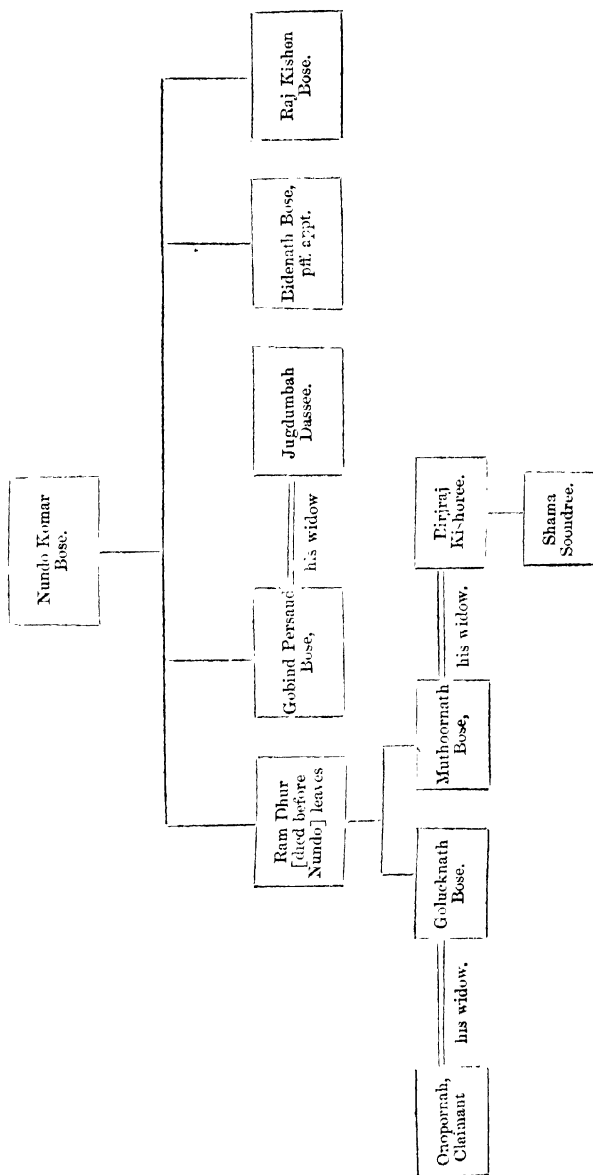
versus

MUSST. KAMNEE DASSEE, MOTHER OF GOPAL DASS
AND OTHERS, NEEL MADHOB DUTT AND OTHERS,
RESPONDENTS, (DEFENDANTS,)

CLAIMANT,

ONOPORNAH, WIDOW OF GOLUCKNATH BOSE, DECEASED.

THE following table serves to shew the relationship which exists between the plaintiff and the claimant Onopornah, widow of Nundo Komar Bose's grandson and other parties concerned.



Plaintiff, on the 26th December 1840, sued the defendants for 5,000 rupees, amount of a bond dated 16th Jheyt 1239, signed by Radha Kishen Dutt, Roop Narain Dutt, Pran Kishen Dutt and Kalee Dass Dutt, in favor of Nundo Komar Bose. The defendants filed their answer, denying the bond, on the 14th July 1841.

On the 2d October 1841, Raj Kishen Bose put in a petition, through his vakeels, Gowree Persaud Sircar and Muthoornath Ray, pleading that the plaint filed by Bidenath solus could not be admitted, and that plaintiff's object was to establish he was manager of Nundo Komar's estate on the part of all his heirs, under an agreement drawn out by them, the terms of which, however, he failed to fulfil.

On the 3d December following, Jugdumbah Dasse and Goluknath, through their vakeel, Neem Chand Ghose, filed a petition acknowledging Bidenath's authority to bring this action, and also the deed referred to by Raj Kishen.

On the 21st December 1842, Raj Kishen Bose, through his vakeels, abovementioned, withdrew his petition of the 2d October 1841, and admitted plaintiff's authority to sue solus.

The principal sudder ameen, Ray Hurree Narain Ghose, on the 24th December 1842, nonsuited the plaintiff, on the ground that other heirs of Nundo Komar were alive, and that therefore plaintiff's action, solus, was inadmissible; at the same time, he authorized the heirs of Nundo Komar Bose to sue for the amount claimed.

BY THE COURT.

The deed under which plaintiff acted and brought this suit, is on the record; it has never been denied by any of Nundo Komar's heirs. Raj Kishen pleaded that plaintiff had failed to carry out the terms of it; but subsequently withdrew his petition. Under such circumstances, it was incumbent on the principal sudder ameen to investigate the case before him, and to decide on its merits as between the plaintiff and defendants. The principal sudder ameen having been dismissed the service of Government, the case must be returned and placed on the file of the present principal sudder ameen for trial. Costs to be awarded on conclusion of the proceedings by the lower court.

THE 10TH JULY 1845.

● PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 139 OF 1843.

Regular Appeal from the Judge of Sylhet.

JUGGERNATH DEY, JUDONUNDUN DASS, HAKOMUT
RAM DEB, JUSMUNT RAM DEB, MADHOB RAM
DASS, RADHARAM DASS, HUNGSRAM DASS,
JOGUL RAM DASS, KISHORE RAM DASS, POK-
HAREE RAM DASS, AND OTHERS, ABSENT, APPELLANTS,
(DEFENDANTS,)

versus

MAHOMED IDREES, RESPONDENT, (PLAINTIFF.)

PLAINTIFF states talook Alim Reyza, No. 3, in Jooar Bunnee Choorg, zillah Nobeegunge, was sold for Government balances of 1244, and bought by Gour Kishore Kur, from whom plaintiff purchased it and got possession of a part. The ameen who was deputed made over to him 59 kolbahs $9\frac{1}{2}$ keears of land in village Jungaleea, pergunnah Kismut Koorsa, when, in 1247, the defendants began to dispute with his ryots Besoo Mistree, Suntoos Mistree, and others, and were about to cut their crops on 1 kolbah of land, resort was had to the foudaree court, and Juswunt and Jodoonundun claimed the lands as their own; and the magistrate, on the 28th May 1841, upheld their possession under Act IV. of 1840.

Plaintiff states the defendants' ancestors got a decree from Mr. Henry Law, which, however, was reversed in the Dacca court of appeal on the 25th May 1797, whence an order issued directing each ryot to sue separately. Two suits were accordingly instituted against Alim Reyza, the zemindar, and were dismissed. Under these circumstances, the hereditary tenure of the defendants is invalid. Some 22 years since village Jungaleea was sold to Ochub Ram and Sunnaye Ram by Alim Reyza, and it came into plaintiff's hands from Gour Kishore the sole purchaser. Plaintiff sues to have his

right of possession upheld, and for reversal of the magistrate's order above alluded to.

The defendants' answer as follows :

Village Jungaleea, &c. is our ancestral property. On the settlement of the district the lands were measured off in their names, and made separate talooks, and they paid their revenue to the Government tehsildar. Previous to the settlement Bunneea Choorg was under the management of Government officers during its attachment. The names of our ancestors, and other talookdars, as well as those of the surburakars were entered in a registry book. On this occasion Alim Reyza, and the other zemindars of Bunneea Choorg, included our ancestors' talook in their tahood. Our ancestors protested against this to the collector, who was about to separate the talooks, when the zemindars urged that the surburakars' names were also entered in the same registry, and that many of them were preferring claims to proprietary rights. That if the petty talookdars were allowed to separate, the surburakars would set up similar claims. The zemindars then proposed, in order to retain the talooks in dependence on their zemindaree, to execute an engagement, binding themselves not to enhance the jumma and to grant separation to such (neej) talooks as should prove their right to it; they accordingly executed the agreement before the collector, and our ancestors' talooks were included in the zemindar's tahood, and they paid their jumma to the zemindars. After this the zemindars, without the knowledge of the talookdars, caused a memorandum to be entered in the registry book, declaring all the names entered therein to be those of surburakars only, and endeavoured to extort enhanced rents. The talookdars appealed to the collector, from whom they received chits, documents specifying the amount of their jumma, which they paid accordingly to the Government tehsildar for three years, and sued for separation in court where they got a decree. This, however, was not affirmed by the provincial court, who in consequence of 76 individuals having sued in one case remanded it. The zemindars again endeavoured to oust us: suits were instituted under Regulation XLIX. of 1793, and our possession was upheld. After this our ancestors brought an action for the separation of their talooks: other talookdars were about to do the same when the zemindars induced them to stay the prosecution, promising to enter into an agreement not to interfere with their talooks, and to demand no additional rents from them. The case was consequently struck off the file on the 12th December 1807. The zemindars continued to molest us, and we entered another suit for separation. This was, on 29th July 1809, dismissed; because, under Regulation VI. of 1807, no talook, the jumma of which was less than 500 rupees, could be separated. Up to 1244 they took the jumma originally assessed on our talook. The talook was now sold for balances due to Government and was

purchased by Gour Kishore Kur, who sold it to the plaintiff previous to getting possession. The plaintiff then began to dispute with us and wished to turn us out; but our possession was upheld. Defendants deny the alleged sale to Ochub Ram and Sunnayee Ram. They aver that the former proprietors never had possession of the disputed lands; that the auction purchaser never got possession, and that plaintiff, a private purchaser from him, has no right to dispossess them. The defendants conclude by saying that what plaintiff states regarding the appointment and dismissal of the surburakars is false. They never interfered with our ancestors' talooks. We hold judgments of the nowab, which shew our talookdaree tenure.

The judge of Sylhet, on the 27th September 1842, recorded as follows: "The point to be determined is whether the talooks claimed by the defendants are their hereditary jungle booree-lands, or whether they were included in village Jungaleea and at the settlement in the zemindaree pergunnah Bunneea Choorg.

"The following documents, viz. Mr. Willis's settlement papers of 1806;—the judgment of the court of appeal at Dacca in September 1818, present Messrs. Shearman Bird and J. Achmuty, in the case of Manick Ram and others plaintiffs;—and the proceedings of the Sudder Dewanny Adawlut, dated 19th June 1827, present Messrs. Courtney Smith and C. T. Sealy;—the other of 18th September 1837, present Messrs. F. C. Smith and J. F. M. Reid;—and a purwanah addressed to the zemindars of Bunneea Choorg by Mr. Achmuty, dated December 28th 1798;—clearly prove that the defendants have no proprietary right to a land tenure of any description. They were only malgozardars paying revenue. I therefore declare the lands appertain to talook Alim Reyza, reverse the 'chits' put in by the defendants, and decree the right of assessment on them in favor of plaintiff."

Both parties being dissatisfied with this decision, the appeal came on for hearing on 9th, 12th, 26th June and this day.

The Court, after an attentive consideration of the precedents quoted, and which they observe are judgments passed in cases precisely of the nature of that now before them, and with reference to the agreement signed by Alim Reyza, and others, dated 1199, put in by the defendants, find that the appellants, defendants, bring forward no proof of right to any land tenure of any description. On the contrary the above mentioned agreement on which they rely, establishes their ancestors to have been surburakars only, subject to dismissal. Under these circumstances, the Court have not entertained the question whether the privileges of an auction purchaser extend to a party who buys from such purchaser. The appeal is dismissed with costs.

THE 16TH JULY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 10 OF 1845.

*Regular Appeal from a decree passed by the Principal Sudder
Ameen of Patna, Ephraim DaCosta, July 2nd, 1844.*

MUSST. MUKHDOOMEH, SHEIKH MUIUB ALI, AND
LULEET SINGH, APPELLANTS, (DEFENDANTS,)
(MUSST. MASOO, DEFENDANT, DOES NOT APPEAL,)

versus

OMA DHUR BHUT, NUNKOO RAM BHUT AND LUKHA
RAM BHUT, FOR SELVES AND AS GUARDIANS OF THE MINOR
SONS OF GUNGA DHUR BHUT, DECEASED, RESPONDENTS,
(PLAINTIFFS.)

THIS suit was instituted, on the 13th March 1843, by respondents, to recover from defendants (appellants) and Musst. Masoo, a 12 annas share of mouza Chundoo—Buddulsukh—Heeranund and other mouzas, with the annulment of an ijarehnameh, or farm-lease, and an ikrarnameh or agreement bond, granted by Musst. Masoo to appellants; and for wasilat, or mesne profits, from the beginning of 1249 to Phagoon 1250 Fuslee.

The claim of respondents is founded on a purchase of the lands at a public sale held by the collector, under instructions from the judge, on the 9th October 1841. The objections of appellants rest on their prior right, in virtue of an ijarehnameh bearing date the 30th January 1837, and an ikrarnameh subsequently executed, on the 9th March 1842; both by the defendant Musst. Masoo, the then proprietor, in satisfaction of decrees against whom, in favor of respondents, the property was brought to sale.

It appears that the original sale took place on the 2nd December 1840, when one Moteeram became the purchaser of the lands, as the agent of Imdad Ali and Musst. Mukhdoomeh, under a mokhtarnameh, or power of attorney, executed by them on the 12th July preceding, expressly with a view to this purchase; but Musst. Mukhdoomeh being indebted to respondents, her name was

not registered, and that of Imdad Ali only was given in. On the 15th June 1841, the purchase money not having been paid, this sale was cancelled.

On the 9th October 1841, the estates were again exposed for sale, and purchased by respondents; and on the 5th May 1842, no protest or claim having been advanced by appellants, to the court, the collector, or commissioner, the sale was confirmed.

On the 8th July 1840, Musst. Masoo brought 5,000 rupees to the principal sudder ameen of Behar, in part of payment of respondents' decree against her; intimating, at the same time, that she had obtained the money by granting a seven years' lease of part of these lands at a jumma of 6,000 rupees per annum. It is in evidence, further, that, in the same year, she farmed out a village called Chuk-Hamed to one Poorunder Muhto, at a jumma of 3,000 rupees; and in the commissioner's proceeding of the 5th May 1842, a claim of mortgage on an advance of 25,000, appears to have been preferred by two individuals, Sheodial and Nund Lal.

The stamp paper on which the ijarehnameh is written, is of one hundred rupees value, and is endorsed as having been sold on the 14th January 1837, by Ramnarain Sing, stamp-vender of the Tirhoot collectorship; but on reference to the registry of stamps of that office, no paper of that value appears to have been sold on the date mentioned, nor was Ramnarain Singh a stamp-vender there in that year.

The ijarehnameh is neither registered, nor attested by the qazee; nor is there any proof of possession on the part of appellants previously to the sale; which they dispute on the ground of this deed, and the prior right conveyed by it.

Under the facts and circumstances above exhibited, the principal sudder ameen passed a decree in favor of respondents; which, with reference to the same, is affirmed by the Court, with costs payable by appellants.

THE 16TH JULY 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 58 OF 1843.

*Regular Appeal from the decision of Seyud Suderul Hossein,
Principal Sudder Ameen of Zillah Rungpore.*

RAJAH KISHENNATH RAI BUHADUR, AND AFTER HIS
DEATH, THE SUDDER BOARD OF REVENUE, APPEL-
LANT,

versus

MAHARAJAH SHEEBINDERNURAIN BHOOB BUHA-
DOOR, AND OTHERS, RESPONDENTS.

THE appellant sued the respondents, in the zillah court of Rungpore, on the 7th September 1841, to recover possession with mesne profits of 750 beegahs of alluvial land, an increment to turufee Korurpore, in pergunnah Beeturbund, included in his zemeendary pergunnah Bahirbund, and of which he had been dispossessed. The action was laid at rupees 7,502.

The respondents, on the other hand, claimed the land as being in part original land belonging to the zemeendaree of Maharajah Sheebindurnurain and partly an increment to that zemeendaree. They stated, further, that in a dispute between respondents and appellants' ryots for this land, there had been arbitrators appointed by mutual consent, and the award of the arbitrators, in favor of the ryots of respondents, had been upheld by the judge in 1831.

On the 16th December 1842, the principal sudder ameen, for the reasons set forth in his decree, dismissed the suit with costs.

There is no boundary stated in the plaint, so that we cannot know what is claimed, or how much we can or may decree. The ameen's map is good for nothing, because, instead of noting thereon what the appearance of the country was, and to whom the different places belonged, he notes merely that the plaintiff's mokhtear said

it belonged to his principal, and the defendant's mokhtear that it belonged to his master's zumeendary. The only point evident from the statements of both appellant and respondents, and from inspection of the maps is, that the river Neel Koomar Dhur many years ago changed its course, and occasioned the dispute for the lands in question. The points to be ascertained on which to found a decision are: (1st) Was the said river the boundary between the estates of the parties? (2d) When it changed its course, did it do so by degrees, washing away the lands on its eastern bank belonging to the appellant's estate, and then returning to its old channel in like manner, by gradually washing away the lands on its western bank, thus, as it were restoring to appellant's estate the lands it had before washed away; which is the statement of the appellant. Or, whether the river at once changed its course, cutting off a considerable portion of the respondents' estate, leaving the land so cut off, in statu quo, as formerly, which appears to be the statement in the respondents' answer to the plaint.

We therefore return the case for the judge to place it on his own file; and we direct that the judge depute an intelligent person to the spot to prepare carefully a map of the land in dispute, and of the said river, and of any channels still existing of its former course or courses, and take the depositions of some of the most respectable residents on both estates and of the land in dispute regarding the points above adverted to, and any other evidence he may deem requisite to elicit the truth, and then decide. The judge will, in the first instance, call upon the plaintiff to state distinctly in a supplementary plaint, the boundary of the land he claims as belonging to his estate.

The usual order passed for the return of the amount of stamp to appellant.

THE 21ST JULY 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 247 OF 1844.

*Regular Appeal from a decision passed by the Principal Sudder
Ameen of Bhagulpore, Mohummud Majid Khan, June 21st,
1844.*

KHAJEH MOHUMMUD MUKEEM KHAN AND KHAJEH
MOHUMMUD ABDO RUHMAN KHAN, SONS OF KHA-
JEH KUMRODEEN KHAN, DECEASED, APPELLANTS,
(PLAINTIFFS,)

versus

DOALEH BUKHSH, SON, AND MUSST. LAL DE, WIFE OF
SURROOP CHUND, DECEASED, BALNATH SAHOO,
AND NUND LAL SAHOO, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellants, on the 12th May 1843, to recover from respondents Company's rupees 14,044-15-8, principal and interest, under the following circumstances.

On the 12th Assar 1234 Fuslee (21st June 1827) Musst. Lal De, as the attorney of her son Doaleh Bukhsh, sold to Kumrodeen, the father of appellants, a third share of the talook of Rampore, for 16,001 Sicca rupees. The deed of sale stated the purchase money to have been paid; but it appeared that 10,000 rupees only were so, a note being accepted for the balance 6,001. On the 20th Bhadoon 1233 F. (6th September 1826) a decree had been passed in the zillah court against the two respondents Doaleh Bukhsh and Musst. Lal De, in favor of Balnath and Nund Lall Sahoo, the other two respondents; which latter submitted to the court as property liable to sale in satisfaction of their decree, the third share of the talook of Rampore, above mentioned as sold to Kumrodeen; praying at the same time that no transfer might be made to him by the collector, under his purchase. The court acceded to this; and the sale was sanctioned as prayed for by the decree-holders. Upon this, to save the lands and maintain his purchase, Kumrodeen on the 7th December 1827, paid in the amount of the decree for which they were about to be sold (Sicca rupees 6,585-8-0) and received (as appellants assert) the decree itself with an endorsement acknowledging the payment. In 1838, however, the respon-

dents Doaleh Buksh and Lal De sued Kumrodeen for the balance due by him of 6,001 rupees on his purchase, and obtained a decree with interest; and it is denied by them, that, on that occasion, any plea was urged of the payment just set forth, to Balnath and Nund Lal Sahoo; which too is denied by the latter. The proceedings of that occasion are not filed in the present case, so the question remains undetermined; but, with reference to the point on which the present claim must necessarily be decided, this is of no moment. True or false, the asserted payment to save the lands from sale, was in 1827: the present action for its refund was brought in 1843: and thus the intervening period exceeds that allowed by the statute of limitation by above three years—with reference to this the suit was dismissed in the lower court; and, on the same grounds, the judgment is now affirmed, with costs payable by appellants.

THE 22D JULY 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 191 OF 1843.

Regular Appeal from the decision of the Judge of Zillah Sylhet.

OMEDE ALEE ALIAS MOHUMUD ZUMAAN, FOR SELF AND
FOR MUNSOR ALEE, MINOR, APPELLANTS, (DEFENDENTS,)

versus

MOOLVEE MOHUMUD IDRIS, RESPONDENT, (PLAINTIFF.)

*Pleaders, Ghoolam Mohumud Khan for Appellants—Ghoolum
Sufdur for Respondent.*

THE respondent instituted this suit for possession on 159 koolbas, 11½ keears, 6 jeyt, 1 raig of land, situate in mouzas Soleoorree, Pireetpoor, and Mirzapoor, pergunnah Jooarbunee Chong, and laid his suit at 4,500 Company's rupees. He stated that the estate in which the above villages were included, was sold for arrears of revenue in 1837, by Government at public auction, and purchased by one Gour Kishore Kur, from whom he bought it. That the appellants held possession of the lands in question merely as managers or surburakars, though they pretended they were really dependent talooqdars on a permanent rent, and would not pay more than they paid to the former proprietors of the estate or zumeen-

daree. In proof of his statement, the respondent referred to divers decisions of courts of law and proceedings of the revenue authorities, which clearly established his claim to possession.

The appellants contended that they held possession in right of dependent talooqdars; that their ancestors' names were entered in the registry of surburakars of the zumeendaree in 1199 with the express understanding that they were not liable to enhanced rent, and might become independent talooqdars, as they had formerly been. In proof of which they referred principally to chittas or deeds given to their ancestors by the revenue authority of the district in 1198 B. E. when the zumeendaree was held under Government management: and to a deed of engagement entered into by the zumeendar in 1199 B. E. when the zumeendaree was restored to him.

The judge decided that the appellants had no right to any talooqdaree tenure at all, decreed possession to respondent, together with usufruct from the date of his purchase of the estate.

This Court observe that there are several decisions of the courts of law, and proceedings of the revenue authorities, rejecting similar chittas to those filed by appellants, given at the same time with them, and for lands within the same zumeendaree to others, as proof of talooqdaree right: and declaring them to be mere surburakaree deeds, or deeds for superintendence of collections of the zumeendaree. One of those filed by appellants from its contents purports to be something more; but the appellants have been unable to produce any other proof of proprietary right. In the deed, ikrarnameh, given by the zumeendar to the collector on restoration of the management of his estate in 1199 B. E., there is a distinct condition, that should any of the surburakars be enabled to prove their right to hold as talooqdars, and to separation, their right shall be ceded, and separation granted. In the mean time the zumeendar binds himself to continue the old surburakars at the fixed jumma or amount of collection then paid, for 10 years, and not to discharge any one of them, save on proof of misconduct to the satisfaction of the collector.

The appellants have been unable to shew that their ancestors did ever prove their right of talooqdaree or proprietary; consequently they must be considered as mere managers, liable, after the lapse of the stipulated period of ten years, to discharge. The fact of the original proprietors having continued them for years in possession on the old terms, cannot affect the right of the respondent derived from a purchaser at a public sale for arrears of revenue to Government; although had they been able to evince other evidence of their asserted right to hold on a permanent rent as talooqdars, such a fact would have been a strong corroboration. The Court therefore dismiss the appeal with costs.

THE 23D JULY 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 240 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Zillah East Burdwan.*

MOOST. SOONDUR KOONWAREE DIBEEAH, APPELLANT,

versus

GUDHADHUR PURSIAD TEEWAREE, RESPONDENT.

*Pleaders, Baboo Prushun Koomar, Government Pleader, Bunsee
Budun and Raj Narain for Appellant, Tarik Chundur and
Ghoolam Sufdur for Respondent.*

THIS suit was instituted by the respondent to cancel an adoption made by the appellant on an alleged permission granted to her by her husband just before his decease, and to obtain possession on her husband's property, as uncle and legal heir on the plea, that she, appellant, was debarred from inheriting, from divers acts of impurity. And the suit was laid at 8,16,029 rupees, 1 anna, 7 gundas, 1 cowrie.

The appellant, in her answer, replied as utterly calumnious the charge of impurity, and contended for the validity of the deed of permission to adopt, to prove which she brought witnesses to the deed itself and corroborated it by other evidence.

The principal sudder ameen upheld the right of appellant to inherit, after her husband's decease, during life time, deeming the charge of impurity futile; but calling into question the truth and validity of the deed of permission to adopt, declared the power to adopt null and void. He therefore dismissed the claim of respondent to inherit during the life time of the appellant, and rejected the deed. The appellant, dissatisfied with his decision, appealed to this Court.

DECISION OF THE SUDDER COURT.

The Court observe, with regard to the charge of impurity, that since there is no proof that the appellant has been excommunicated by her tribe, for having been guilty of any impurity, which would, according to the Shastres, have rendered her an outcast, the charge is not one which should be entered upon in any court of justice. They therefore consider the right of appellant to inherit, as widow, indisputable. Her right to adopt is founded on the deed called "unoomuttee putr" filed by appellant. It is a twofold deed; it first gives power to the wife to adopt a son, and then gives herself a full and unreserved power to alienate the whole of the property of her husband. These two powers conferred, are at direct variance with each other. This, though not absolutely illegal, is highly improbable. The witnesses to the deed, who have been produced to prove it, are all dependants or servants of the appellant—not a single relative has been brought to testify to it. The deed is not mentioned in the two petitions presented to the judge and collector, and which were written on the very day the deed was written. It was never registered or sealed by the cazee. It was not mentioned when the appellant claimed to inherit as widow. It was not named even after the respondent had filed a petition in the court of the zillah, declaring that appellant's amlah, or servants, were fabricating such a deed, when, if in existence, it would most naturally have been produced in court.

Finally, when the appellant reported to the authorities that she had made an adoption, she never made mention of the deed. Moreover, of the witnesses to the deed, five in number, who have testified to it, one of whom drafted it, and another of whom engrossed it, not one has said a word about the unlimited power to alienate all or any part of the property, so fully detailed in it. The Court therefore consider the deed a fabrication, and dismiss the appeal with costs.

THE 23D JULY 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 212 OF 1844.

*Appeal from the decision of Mr. R. Loughnan, Judge of
Bachergunge.*

BIRJKISHWUR SEIN, APPELLANT,

versus

MR. EDMUND KENT HUME, RESPONDENT.

WHILST the case which forms No. 204 of 1844, of this Court, was pending in the lower courts, the respondent sued the appellant summarily for rent, and got a decree from the collector, for the full amount of rent. The commissioner of revenue modified that decree, and ordered that the proceedings in the summary suit should be sent to the civil court, that the claim for full rent might be disposed of, when the regular civil suit should be decided. When this latter case was before the judge, these proceedings in the summary suit, were sent to his court, and as he decided against the under tenant's claim to a reduction on account of diluvion in the appeal case, he of course upheld the collector's decree in the summary suit.

With reference to our judgment in the case No. 204 of 1844, it is of course necessary to reverse the judge's order respecting the summary decree, which we do accordingly. When a final decision is passed in the case returned, the judge will pass suitable orders in this case. The price of the stamped paper, on which the appeal was written, will be returned to the appellant.

THE 23D JULY 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 71 OF 1844.

Special Appeal from a decree passed by the Principal Sudder Ameen of Gya, June 13th, 1843; modifying one passed by the Moonsiff of Gya, March 20th, 1843.

NICHUN SAHOO, APPELLANT, (PLAINTIFF,)

versus

JHOOREE SAHOO, RESPONDENT, (DEFENDANT.)

THIS suit was instituted by appellant, on the 9th August 1842, to recover from respondent a piece of land, occupied by a house; the house to be removed, or an equitable price accepted for it by respondent. The estimated value of the whole, Company's rupees 298-15-11, including arrears of rent.

It appears, that appellant purchased the land at a publicsale, held in execution of a decree against one Lulloo Baboo, *alias* Rajdeo Singh; and that defendant, at the time, occupied a house or shop upon it, which he had purchased from the preceding occupant, who had erected it on the understanding that he was never to be called upon for more than a certain rent, then agreed upon: this, under a general notice, issued by a former proprietor of the land (Chand Bibi) to induce persons to resort to and settle upon it. Lulloo Baboo had already sued the old occupant to enhance the rent, and had failed; and the object of the present action was, as stated, to oust respondent altogether.

Under the decree of the moonsiff, appellant would have succeeded in accomplishing this; but he was thwarted by the judgment of the principal sudder ameen. This decided, that, possessing the rights of him from whom he purchased, respondent could neither be ejected nor compelled to pay a rent exceeding that which had been agreed to by the proprietor of the land with his (respondent's) predecessor.

A further appeal to the Sudder Court was applied for, and admitted on the ground of the case involving points of law not previously determined; but there has not appeared any thing, in the Court's opinion, to induce an interference with the decree appealed against; which is accordingly affirmed, with costs payable by appellant.

THE 23D JULY 1845.

PRESENT :

J. F. M. REID and
A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 204 OF 1844.

*Special Appeal from the decision of Mr. R. Loughnan, Judge of
Backergunge.*

MOOSUMAT SHAMA SOONDERY, WIFE OF RADIIA-
CHURN SEIN, DECEASED, AND BIRJ KISHWUR SEIN,
APPELLANTS,

versus

MIRZA AHMUD JAN, AND OTHERS, RESPONDENTS.

THE appellants state, that their ancestor obtained from the zemeendars of pergunnah Dukun Shabazpoor, three talookdaree pottahs, one in the year 1156, and two in the year 1165, of talookkeh mouzah Manikpoor, and mouzahs Necamutpoor and others. That in 1171, a regular settlement agreement was entered into between the zemeendars and the talookdar for the above lands,—one condition of the settlement being, that the talookdar should receive an abatement of rent for land carried away by the river. That diluvion had taken place to a great extent, from the year 1230. That the appellants had applied, without success, for a suitable reduction of rent. That from the year 1233, land belonging to mouzah Manikpoor, had been appropriated by the Government, for the manufacture of salt,—the zemeendars receiving a remission of revenue on account of the same, but the talookdars none from the zemeendars. They accordingly brought the present suit, on the 16th April

1839, to obtain a reduction of annual rent to the extent of Company's rupees 3,698-2 5 gundas, that being the amount to which they were entitled, according to measurement.

The respondents answered, that two separate causes of action had been illegally included in the same suit; that no such settlement agreement as that on which the appellants founded their claim, had been entered into; and that as more than 16 years had elapsed from the date when diluvion is alleged to have commenced, up to the date of action, the suit was barred by the rule of limitation.

On the 18th July 1840, the principal sudder ameen, Chunder Seekur Rai Chowdry, decided that with respect to the claim for remission on account of land appropriated for the manufacture of salt, the plaintiffs might sue separately. He dismissed the claim for reduction of rent on account of diluvion, because he doubted the genuineness of the settlement founded on by the plaintiffs, because he considered that at the decennial settlement the talookdars had entered into a settlement with the zemeendars, for their lands, at an invariable rent; and because the suit was barred by the rule of limitation, more than 12 years having elapsed from the date when diluvion commenced.

On the 17th November 1843, the judge confirmed the above decree, confining his confirmation, in the claim for reduction on account of diluvion, to the ground, that the claim was barred by the rule of limitation.

A special appeal was admitted in this case by Mr. J. F. M. Reid, on the 6th July 1844, to try the point, whether the rule of limitation applied.

We are of opinion, that the rule of limitation has not been properly applied in this case. Assuming, that an under tenant has, by the terms of his settlement, a claim to a reduction of rent, on account of diluvion, we think it would be a forced and unjust construction of the law of limitation, to require the under tenant to bring his suit within 12 years from the date when diluvion commenced. The operation of diluvion is very uncertain. Sometimes it is very slow and gradual; at other times it is equally rapid. Sometimes, slow at first, it is rapid afterwards. It is absolutely necessary, therefore, to allow some latitude to a tenant whose lands have suffered from the action of the river, in fixing the time when he may think it proper from the amount of loss sustained, to bring an action against his zemeendar. If after diluvion had entirely ceased, no claim for compensation were made for 12 years, that would be a case, we conceive, in which the rule of limitation would apply. Over-ruling, then, the above ground for dismissing the suit, and observing that the judge did not investigate the other points, we return the case, that the judge may re-admit it on his file, and after making the necessary inquiries, pass a suitable decree. The judge will be careful in sifting the principal sudder

ameen's reasons for rejecting the alleged terms of settlement between the zemeendars and the talookdar in 1171,—those reasons appearing to us any thing but satisfactory. The price of the stamped paper on which the appeal was written will be returned to the appellant.

THE 24TH JULY 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 233 OF 1844.

*Regular Appeal from the decision of Moolvie Looft Hossein,
Principal Sudder Ameen of Jessore.*

RAMCHUNDER MUJMOOADAR, GUARDIAN OF INDOO
BOOSHUN DEB RAI, APPELLANT,

versus

RAMGOPAL MOOKERJEA, RESPONDENT.

THE respondent sued the appellant and others, in the civil court of Jessore, on the 8th April 1844, to recover the sum of Company's rupees 16,286-11-7, as arrears of rent due from mouzah Kandura, in the zemeendarce pergunnah Muhmood Shye, belonging to Indoo Booshun Deb Rai. Of that pergunnah, the respondent had held a lease, and though the above mouzah formed a part of the zemeendarce, it had been excluded from the lease, and the amount now sued for, was the annual rent of the mouzah, from the commencement of the lease, up to the time when the respondent got possession of the said mouzah.

No answer was filed, though notices were duly served on the defendants.

On the 27th June 1844, the principal sudder ameen decreed for the plaintiff, with costs.

The decree appealed from, being an ex-parte one, the sole point for consideration is, whether, under this Court's Circular Order dated the 12th March 1841, the case ought to be returned for investigation on its merits, or not? The individual against whom the decree has been passed, is a minor, and his property is under the jurisdiction of the Court of Wards. Due notice was served on the defendants, and the omission to file an answer, originated in the dilatory pro-

ceedings of the revenue authorities. I regret to be compelled to send back the case, to be investigated on its merits; but I cannot allow the interests of the minor to be sacrificed without a hearing.

The case will be returned, and the principal sudder ameen will re-admit it on his file, and pass a decree after receiving and considering the pleas and proofs of both parties. The price of the stamped paper, on which the appeal was written, will be returned to the appellant.

THE 25TH JULY 1845.

PRESENT :

A. DICK,

JUDGE.

CASE No. 270 OF 1842.

Special Appeal from the decision of the Judge of Zillah Backergunge.

JYKISHEN BHOSE, SUMBOO RAM, &c. APPELLANTS,
(DEFENDANTS,)

versus

MEER ABDOOL KUREEM AND FOR GHOOOLAM SOOBAN,
MINOR, RESPONDENT, (PLAINTIFF.)

*Pleaders, Tarik Chundur for Appellants, Mr. Skinner and Ubas
Alee for Respondent.*

THIS suit was laid at 1,489 rupees 2 annas 4 pie for arrears of rent from 1234 to 1245 B. E.

The respondent founded his claim on a kaboolecut given by one of several shareholders of a portion of land, and the principal sudder ameen gave a decree on it against the appellants, the other shareholders, which the judge confirmed. The appellants denied that their co-partner ever gave any deed of the kind; that whether he did or not it could not be binding on them; that they laid claim to the land on a fixed rental, denominated a huwala, and if respondent and his father, the purchaser of the estate in which it was situated, denied their claim, he should have proceeded to insure the proper rent under Regulation V. 1812.

The appellants have been unable to prove their right to the fixed rental tenure, therefore the lower courts in rejecting it appear correct. But as the appellants entered into no engagement to pay

the rent claimed, and the respondent's ancestor and he neglected to proceed under Regulation V. 1812 and give due notice of the demand, and omitted to sue summarily for arrears yearly, the courts should have ascertained the proper rent of the land in question according to the rules laid down in Regulation V. 1812, and decreed accordingly, either with interest on the principal, or, in consideration of the respondent's and his ancestor's neglect to issue out notice of the demand to be made, or to sue summarily for the arrears, have decreed the principal only without any interest. Ordered that the case be returned and re-placed on the principal sudder ameen's file, and that he proceed as above stated.

THE 28TH JULY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 160 OF 1844.

Regular Appeal from a decree passed by the Principal Sulder Ameen of Patna, Ephraim Da Costa, February 27th, 1844.

HURRUK'H NURAIN SINGH, APPELLANT, (DEFENDANT,)

versus

MOHUMMUD MUDEENOLAH AND MUSST. BOOLUN
WIDOW OF SHEIKH EZUD BUKHISH, RESPONDENTS,
(PLAINTIFFS.)

THIS suit was instituted, on the 25th of September 1841, by respondents, against appellant and four others, viz. Musst. Soothur Konwur, heir of Oodye Kurn Singh, Noneid Singh, Chukurdharce Singh, and Shapurshad Singh; which four individuals have not appealed. The suit was to bring to sale a 3 as. 12½ dam share of mouzahs Peer-Burhoneh and others, in satisfaction of a decree held by respondents against Oodye Kurn Singh, and to cancel a cowaleh, or deed of sale, executed by Oodye Kurn Singh and the defendants who do not appeal, in favor of appellant.

It appears, that the lands contested were pledged to respondents in 1829 (1236 F.) by Gour Narain, the father of Oodye Kurn Singh, and subsequently by Oodye Kurn Singh himself, as security for the payment of eight thousand rupees, advanced upon them by respondents; and that, on the 27th June 1838, a decree was passed in favor of respondents for rupees 5,687-14-12, with liberty to

bring these lands to sale,—in failure of course of payment of the same by Oodye Kurn Singh, &c. To prevent the sale, a cowaleh, bearing date the 2d February 1838, was produced by appellant, executed in his favor by the other defendants; who also dispute the right of Oodye Kurn Singh to alienate the property claimed by respondents, without their concurrence. The pledge of 1829, and the consequent possession of the lands by respondent without opposition or dissent of any kind on the part of these defendants, being clearly established, the cowaleh of 1838, in favor of appellant, could not of course be admitted to supersede the prior right; and on this ground the principal sudder ameen decided in favor of respondents.

Nothing appearing in appeal to affect the justice and propriety of the decree of the lower court, it is affirmed, with costs payable by appellant.

THE 28TH JULY 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 218 OF 1844.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Patna, Ephraim Da Costa, February 27th, 1844.

MOOST. SOOTHUR KONWUR, APPELLANT, (DEFENDANT,)

versus

MOHUMMUD MUDEENOLAH AND MUSST. BOOLUN,
RESPONDENTS, (PLAINTIFFS.)

THE appellant in this suit was a defendant in No. 160 of 1844, decided this day; and appealed in *forma pauperis*. The particulars of the case and judgment passed by the Court, are set forth under the above number. In the present appeal, the decree of the lower court having been affirmed, costs will be paid by appellant.

THE 29TH JULY 1845.

PRESENT:

A. DICK,
JUDGE.

CASE No. 241 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen
of East Burdwan.*

MOOSUMAT SOONDUR KOONWAREE DIBEEAH,
APPELLANT, (PLAINTIFF,)

versus

GUDHADHUR PURSHAD TEEWAREE, RESPONDENT,
(DEFENDANT.)

SUIT laid at Company's rupees 5,01,431, 15 annas, 9 pie, value of share of real and personal property belonging to the estate of Huree Purshad Tewaree, deceased.

The appellant sued as widow of Huree Purshad Tewaree, and mother of her adopted son, Radha Purshad, minor. When her adopted son died, the principal sudder ameen nonsuited the case, because the appellant had, in another case between the parties, instituted to try the legality of the adoption and her right to inherit as widow, admitted that her adopted son was sole heir of Huree Purshad, and that she acted merely as his guardian, and therefore could not now appear and claim of her own right. From this decision the appellant appealed to the Sudder Court summarily, and the principal sudder ameen was directed to replace the case on his file, and issue notice for heirs of Radha Purshad to come forward. The appellant then proved her right of heir to her adopted son. On the other suit between the parties being decided, and the adoption declared illegal, but the right of appellant to inherit as widow admitted, the principal sudder ameen, on the supposition that appellant sued solely as heir of her adopted son, dismissed the suit, intimating that she might sue for any claim she had to the estate of Huree Purshad as his widow.

JUDGMENT.

As the appellant sued in the first instance as widow of Huree Purshad, and as mother of her adopted son, a minor, and when she appealed from the nonsuit claimed to be heard, as widow according to the Shasters, as devisee under the twofold deed, called unoomut-teeputr, and as heir of her adopted son, it is clear she never gave

up her claim as widow, though she was preferring a claim to be heard as mother also of Radha Purshad. Her right as widow has been decided by the principal sudder ameen himself and his decision confirmed in appeal by the Sudder Court, therefore it is indisputable. As she never gave up this right, though she brought more prominently forward the rights by adoption, equity requires that she should be allowed to prosecute her claim on the former, notwithstanding the latter have been adjudged invalid.

Ordered, that the case be returned to the zillah to be restored to the file and re-tried on its merits.

THE 30TH JULY 1845.

PRESENT:

A. DICK,
JUDGE.

CASE No. 238 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Backergunge.*

RUSHEEK CHUNDER NEYOGEE, APPELLANT,
(PLAINTIFF,)

versus

PUDOO SOONDUREE, RESPONDENT, (DEFENDANT.)

SUIT laid at 9,627 Company's rupees 8 annas 0 pie, to cancel an under tenure, called "neem ousut," and to obtain possession on the lands thereof and rent for the same in arrear.

The appellant founded his claim on a purchase of the superior tenure called, ousut, which was sold for arrears of rent on it, by the collector under Regulation VIII. 1819, which he bought, and he asserted that the former superior tenant, the defaulter had collusively given the under tenure, or neem ousut to respondent's husband, and which became null and void on the sale of the defaulter's tenure.

The respondent answered that the superior tenant gave the under tenure at a rate fixed by the collector, who gave the superior tenure, and fixed the rents payable by the under tenants respectively; that they paid it to the former superior; that it was all the appellant could demand, and which his people had duly received and given receipts for, until he preferred this suit.

The principal sudder ameen decided that the appellant was entitled to cancel the under tenure or to possession on the land, because the superior tenure was not on a fixed jumma or amount of rent, and was for 10 years only, which period had elapsed already; but that appellant might sue respondent for any arrears of rent due, on the rate fixed in the deed of the neem ousut.

JUDGMENT.

On perusal of the deed of sale granted to appellant by the collector, it appears that he purchased whatever rights the defaulter, the holder of the superior tenure, possessed. The sale was made under Regulation VIII. 1819. Therefore the principal sudder ameen should have called upon the appellant to file a copy of the pottah, or deed of lease granted to the former tenant, the defaulter, whose rights he purchased, to ascertain if it contained any condition in it regarding under tenants, or gave the superior tenant any power to grant under tenures; and have called upon respondent to shew proof of any peculiarity in the leasing of the different tenures included in the zumcendaree in question, held khass or under Government management, which precluded appellant from interference in her tenure. The principal sudder ameen should then have decided in conformity with Clause 1, Section 11, Regulation VIII. 1819. And as the appellant sued for arrears of rent at an enhanced rate, if the under tenure proved invalid, he should have taken proof, or instituted a local inquiry to ascertain the proper rent payable for the land in question, and decided accordingly.

Ordered, that the suit be returned for him to proceed as indicated above. He is also admonished to observe, in future, carefully and strictly the rules laid down in Section 10, Regulation XXVI. 1814, the importance of which, and their due observance has been strenuously and distinctly enjoined by Circular Order of the Sudder Court No. 12, dated 7th August 1817, and the careful filing of the proceeding in the record of the case by Circular Order No. 179, of the 5th August 1836.

THE 30TH JULY 1845.

PRESENT:

A. DICK,
JUDGE.

CASE No. 239 OF 1842.

Regular Appeal from the Principal Sudder Ameen of Backergunge.
RUSHEEK CHUNDUR NEYOGEE, APPELLANT, (PLAINTIFF,)

versus

IIUR MOHUNEE, RESPONDENT, (DEFENDANT.)

SUIT laid at 9687-8-0 to cancel an under tenure, for possession on the lands thereof, and for arrears of rent.

The features of this case are precisely the same as those of the former case, and the same judgment passed.

THE 30TH JULY 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 283 OF 1844.

Regular Appeal from a decision of dismissal by nonsuit, passed by the Principal Sudder Ameen of Sarun, Syud Imdad Ali, August 20th, 1844.

RAM PURSHAD SOOKUL APPELLANT, (PLAINTIFF,)

versus

RAMDIAL SOOKUL, MUHA MAYA DUTT SOOKUL,
AND 104 OTHERS, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant, on the 18th September 1843, to recover from the respondents Ramdial and Muha Maya Dutt, possession of ten beegahs, seven beeswahs of land in mouzah Murkun, &c. with wasilat or mesne profits from 1239 to 1250 Fuslee; and from them and the other 104 respondents, certain debts and balances (*luhneh*); the whole estimated at Company's rupees 6,641-1-11-4.

The origin of the suit was a tukseemnameh, or deed of partition, executed by Ramdial in favor of his two sons, Ram Purshad and Muha Maya Dutt, so far back as 1817, (1224 F.) backed by a decree, founded on a sooloonameh, or deed of amicable adjustment, between the two latter, passed on the 2d February 1825. The more recent of these two documents therefore is of a date upwards of eighteen years antecedent to that on which the present action was instituted; and this might have been made a ground of dismissal of the suit. The anomalous claim, however, of debts and balances from above a hundred persons, in the same plaint, who might or might not be individually responsible for the sums asserted to be due by them, was deemed by the principal sudder ameen to warrant a nonsuit, which was passed accordingly; leaving the courts open to appellants, should he see fit to proceed conformably to rule and practice.

On this ground the decision is affirmed, with costs payable by appellants.

THE 31ST JULY 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 120 OF 1844.

*Regular Appeal from the decision of Molovy Mahomed Kulleem, first
Principal Sudder Ameen of Jessore.*

RAM DHUN BUKSHEE AND MODHOO SOODUN BUK-
SHEE, SONS OF SHAM CHAND BUKSHIEE, OTHERS ABSENT
IN APPEAL, DEFENDANTS, (APPELLANTS,)

versus

PURBOODDEEN BISWAS, PAUPER, (PLAINTIFF,)

RESPONDENT.

THIS plaint was filed on the 3d December 1842 corresponding with the 19th Aghon 1249.

Plaintiff states as follows:

I had a mowroosee jumma of Sicca rupees 196-4-9 in village Joyonta, lot Joyonta, pergunnah Chungotea, a putnee talook belonging to Sham Chand Bukshee, father of the defendants, appellants. I had also a jumma of 4 rupees 8 annas in a lakhiraj tenure belonging to Sheeb Sunkur Banorjea, father of Goroo Dass, defendant, making a total of 200 rupees 12 annas 9 pie. My ancestors and myself have all along enjoyed this. Former proprietors sued us under Regulation V. of 1812, and our jumma was upheld. Kooroona Mayee Dibah and the above mentioned Banorjea, with the other defendants, ousted me in 1238 by taking rents from under ryots. Several cases came on in the fonjdaree court. I had not the means of paying the expenses of court, in consequence of which delay has occurred in the institution of this suit. I was admitted to sue in *forma pauperis*, on the 23d September 1842, and accordingly bring this action at 7,052 rupees, estimating the value of the lands at 1,000 rupees, and the mesne profits from 1238 at 6,052 rupees, and pray that interest may be awarded to date of realisation.

The defendants, Ram Dhun and Modhoosooden Bukshee, state in answer that plaintiff had a variable jumma in the village of Joyonta in the wuqf mehal of Khajeh Mahomed Mohsin: when the mehal was under the local agents, the collector measured plaintiff's lands and issued a notice on him to come in and pay 565 rupees 8 annas 18 gundas 3 cowries according to pergunnah rates. My father and our uncle Nemanund got a putnee of lot Joyonta in 1228 from the collector under the orders of the Board of Revenue—he did not pay his rents, and our gomashteh, Putteeram Chuckerbutty, sued him for 393 Sicca rupees balance of rent, and on the 8th Bysack 1229 or 20th May 1822 got a summary decree against him. Execution was taken out; he did not pay; and our gomashteh, on the 24th July of that year, under the provisions of sections 18 and 19, Regulation VIII. of 1819, resumed the holding, and took kaboleuts from other ryots. Plaintiff sued our father and uncle to have his jumma fixed. On the 24th January 1824 his plaint was dismissed, and this order, on the 26th January 1830, was affirmed in the Calcutta court of appeal. Plaintiff now, after the lapse of 21 years, during which we have had undisturbed possession, comes into court; his plaint is, under section 14, Regulation III. 1793, and the provisions of Construction No. 965, inadmissible. We were put in possession in 1229 under order of court, as shewn in the case disposed of in appeal, on the 26th January 1830, though plaintiff on his application to be admitted a pauper put in two false receipts for rent in order to prove his possession previous to 1238. Plaintiff states his jumma to be 196 rupees, though we hold a summary judgment shewing it to be Sicca rupees 565. As to the jumma 4 rupees 8 annas in Seeb Sunkur Banorjea's lakhiraj lands, when our father and uncle got a putnee of lot Joyonta Seeb Sunkur had 12½ beegahs

in village Joyonta, and they gave these lands to other ryots on which the lakherajdars sued them; the case was adjusted, and it was agreed that 12 rupees 8 annas malgozaree should be paid to them by our father and uncle, and their possession was upheld.

A separate answer was filed by Azeemoddeen Biswas and other ryots, resting their defence on that of the above mentioned Ram Dhun and Modboosoden.

Two replies were put in by the plaintiff to the above answers. In that to the ryots, it was urged that the defendant, Ram Dhun Bukshee, fearing the result of the appeal to the Calcutta provincial court made by him, plaintiff, gave up the lands to him voluntarily.

The principal sudder ameen, on the 14th February 1844, gave judgment in favor of the plaintiff, on the following grounds. He was of opinion that the following documents, viz. a proceeding of the 20th February 1816 in a case under Regulation V. of 1812,—a pottah, dated the 5th Assar 1226, signed by Seeb Sunkur Banorjea, and sundry receipts for rent,—and the depositions of Arman and Fakeer Mahomed and other witnesses,—proved that plaintiff had two jummas, one of 196 rupees, and another of 4 rupees, 8 annas in the village of Joyonta; and that he held them till 1238; that defendants did not shew any ishtahar had been issued on the plaintiff in the Regulation V. case alluded to; that on the settlement of the case in the court of appeal, the defendants gave up the lands to plaintiff, who held them to Bhadoon 1238 as shewn by the receipts for 1237 attested by Arman and Fakeer Mahomed; and that the law of limitations, pleaded by the defendants, did not apply to this case, as they had fraudulently deprived plaintiff of his possession, and he was, under the provisions of Regulation II. of 1805, entitled to recover; that the pottah signed by Seeb Sunkur Banorjea, in favor of plaintiff, which is attested by Arman and Fakeer Mahomed, clearly proves his right to the lakhiraj lands.

Under the above circumstances, he decreed possession to plaintiff with mesne profits, not exceeding the amount claimed, to be fixed in execution of decree, and at the same time declared the plaintiff's jumma to be as stated in his plaint, which amount he directed should be deducted from the mesne profits, against Ram Dhun Bukshee and others with costs.

BY THE COURT.

The respondent, plaintiff, states he was ousted in 1238 and supports his claim by producing three receipts for rents for the year 1236, and seven for the year 1237. These are not attested by the writer; but by two witnesses, whose evidence is altogether, on account of their discrepancy one with the other, unworthy of credit. The Court are of opinion that the respondent has adduced no proof whatever of possession of the lands he now claims, since the period of the grant of the putnee to appellants'

father and uncle by the Board of Revenue in 1228 B. S. or 1821 A. D.; and they remark, that the amicable adjustment, mentioned by the respondent in his reply to Azcem Biswas and other ryots, under which he alleges he was restored to possession by the appellant, is not even alluded to in the original plaint, nor in his reply to the principal defendants, which was indispensable; neither is any written agreement placed on the record. The omission was supplied, it is clear, in order to meet the objection raised by the appellants to the institution of the action, after the lapse of the prescribed period under the law of limitations, which the Court observe applies to their case. Under the above circumstances, they reverse the decision of the lower court, and give judgment in favor of the appellants with costs.

THE 5TH AUGUST 1845.

PRESENT:

C. TUCKER,

JUDGE.

 PETITION No. 434.

IN the matter of the petition of Ram Tarun Chuckerbutty filed in this Court on the 19th June 1844, praying for the admission of a special appeal from the decision of William Tayler, Esq., acting judge of zillah Midnapore, under date the 14th March 1844, affirming that of Gunga Narain Mookerjee, moonsiff of Chowkey Bugree, under date 5th June 1844, in the case of Ram Tarun Chuckerbutty and Soodaram Chuckerbutty, plaintiffs, *versus* Mohun Koond and Gokool Koond, defendants, It is hereby certified, that the said application is granted on the following grounds:

The plaintiff having obtained a summary decree against the defendants for rupees 20-12,—account 4 beegahs and 4 biswas of land situated in mouzahs Ghotbunnee, Habla and Sungyeboonee, endeavoured to execute the same; but the defendants kept out of the way, and ultimately the case was struck off the file on default. The plaintiff then instituted the present suit against the defendants for the recovery of the amount with interest. The case was dismissed by the moonsiff, on the ground that the execution of the decree had not been struck off by default, but in consequence of one Ram Tunnoo Chuckerbutty having obtained a decree in a suit against the plaintiff for the proprietary right in the lands in question. This decision was affirmed by the judge.

The petitioner pleads now, that the suit in which Ram Tunnoo Chuckerbutty got a decree against him, was not for these lands, but for others, and that he urged this point in the lower courts and requested enquiry to be made; but that none was made, and that the courts were satisfied with an order of the collector to that effect, passed in his absence.

On perusal of the decrees of the lower courts, it is clear no proper enquiry was made on this point; and as the plaintiff had obtained two summary decrees against the defendants, one dated 16th March 1838, the other 21st May 1838, and the present suit relating to the latter only, whilst Ram Tunnoo Chuckerbutty appeared as a third party in the former only, it was incumbent on the courts below to sift this point thoroughly. The special appeal is therefore admitted, and the case remanded to the judge, who will return it to the moonsiff with instructions to restore it to his file on its original number, and to make full enquiry on the point above indicated, and dispose of the case accordingly.

THE 5TH AUGUST 1845.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 676.

IN the matter of the petition of Radha Bullub Pandey filed in this Court on the 23d August 1844, praying for the admission of a special appeal from the decision of Moulvee Myenooldeen Sufdur, additional principal sudder ameen of Hooghly, under date the 3d June 1844, reversing that of Ramnarain Sandyal, moonsiff of Dwarhatta, under date 19th January 1844, in the case of Radha Bullub Pandey, plaintiff, *versus* Radhanath Mitter, and others, defendants, It is hereby certified that the said application is granted on the following grounds:

The petitioner states himself to be the proprietor of 31 beegahs and 10 cottahs of land in mouzahs Kamdebporc and Goopeenathporc, under a decree of court. One Kenaram Chowdry having become security to Government for a ferry-man, his lands, stated to consist of 43 beegahs in mouzah Taldah, were sold for the default of his principal, and purchased by one Kali Pershad, who thereupon dispossessed him of 14 beegahs and 3 cottahs of land in mouzah Kamdebporc. The present suit was then instituted to recover possession of the said 14 beegahs and 3 cottahs of land.

In the moonsiff's court the plaintiff was successful and obtained a decree, but, on appeal, the additional principal sudder ameen, with the concurrence of the judge, returned the case to the moonsiff, stating that the plaintiff should have sued to annul the sale, intending thereby that the plaintiff should be nonsuited. Against this order, the present application is filed. The additional principal sudder ameen states in his decretal orders—"The lands having been sold for the recovery of arrears of ferry rents due to the Government, the plaintiff ought to have sued to annul the sale." But this is at once to decide the question, without investigation. The plaintiff's suit is grounded on the very point that they have not been sold, and *prima facie* all the evidence is in his favor.

The plaintiff's lands are situate in mouzah Kamdebporc. The lands sold belonging to Kenaram Chowdry are sold as appertaining to mouzah Taldah. How then, without investigation, can the additional principal sudder ameen take upon himself to say the plaintiff's lands have been sold? The real dispute probably is as to the boundaries of the two villages. I admit the special appeal therefore, and remand the case to the additional principal sudder ameen, with instructions to restore it to his file on its original number, and dispose of it on its merits as between the parties before him.

THE 6TH AUGUST 1845.

PRESENT:

R. IL RATTRAY,
JUDGE.

CASE No. 216 OF 1844.

*Regular Appeal from a decision passed by the Principal Sudder
Ameen of Patna, Ephraim DaCosta, February 29th, 1844.*

MUSST. MOLAEM ONISSA APPELLANT, (PLAINTIFF),

versus

MUSST. HOSEINEE BEGUM RESPONDENT, (DEFENDANT.)

THIS suit was instituted by appellant, on the 20th July 1842, to recover from respondent certain lands, forming portions of mouzahs Bazeedpore, Ashruffpore, Kulloopore, and others, estimated at Sicca rupees 5000, or Company's rupees 5,333-5-4, being the amount stated in a cowaleh, or deed of sale, in virtue of which the claim was preferred.

Musst. Zinub Begum, Musst. Pearce Sahibeh, and Musst. Achge Sahibeh, the mother and two daughters of Musst. Jance Begum, deceased, opposed the claim of appellant, and impugned the whole transaction as false and fraudulent. A brief abstract of the case will explain the nature of the proceeding involved in it, as well as the ground of the decision which has been appealed from.

On the 22d April 1839, a decree was passed in favor of Musst. Jance, against Musst. Hoseinee, respondent, for 2,158 rupees; in satisfaction of which, Jance wished to bring the lands now contested to public sale. In this, she was opposed by appellant, on the score of a prior right, founded on a cowaleh bearing date the 1st May 1832, executed in her favor by respondent.

In the lower court, this cowaleh was deemed to have been fraudulently prepared by respondent and Mohummud Ali Khan,—appellant being a party aiding to effect their object,—the said Mohummud Ali Khan being the husband of respondent, and son of appellant (the pretended purchaser of the property); and the whole was regarded as the result of a conspiracy between these persons, to cheat the decreeholder.

It was observed, that, although the cowaleh was dated above ten years before appellant's suit was instituted, neither interest nor mesne profits were sued for; nor was the assigned cause of possession having been so long withheld (the non-payment of 400 rupees of the purchase money) admitted as a sufficient explanation under the circum-

stances exhibited. Further, it was established, that, in two instances, subsequently to the date of the cowaleh, portions of the lands included in it, had been disposed of by respondent to other parties. Altogether, the fraud was evident; and a decision, dismissing the claim of appellant, was passed accordingly.

Under the same view of the case as that just set forth, the judgment of the lower court is affirmed, with costs payable by appellant.

THE 6TH AUGUST 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 702.

IN the matter of the petition of Molovy Hamid Russool filed in this Court on the 8th September 1844, praying for the admission of a special appeal from the decision of the additional principal sudder ameen of Patna, under date the 9th July 1844, affirming that of the sudder ameen of Patna, under date 24th April 1843, in the case of Molovy Hamid Russool and another, plaintiffs, *versus*, the Government, Motee, Nissar Hossein and others, defendants. It is hereby certified that the said application is granted on the following grounds.

Motee and others, 8 annas proprietors of village Hosseinpore Powkorch *alias* Barce Begah, pergunnah Saureh, sold the same together with aymch lands in chuck Mahomed Hossein to petitioner for 500 rupees, on the 26th October 1837 or 13th Kartik 1245 Fuslee. Nissar Hossein and others, the lakhirajdars of the village, denied in the case pending before the resumption officer the rights of Motee, &c., and alleged that Gholam Moheeddeen, their ancestor, had long previously bought the property, viz. in 1198 Hidgeeree or 1191 Fuslee, from Motee and others' ancestors. Mahomed Rehmut Khan, deputy collector, rejected petitioner's claims, and on the 30th April 1838 made a settlement with the lakhirajdars, calling them the maliks of the property.

Petitioner brought an action against them, on the 4th September 1839, in the Patna court, and a decree was passed in his favor on the 18th April 1840. On the 11th July following, after the period of appeal had expired, Nissar Hossein applied for review of judgment, it was admitted, and on the 2d December 1841, the sudder ameen, Niamut Allee, disposed of it, as follows.

A claim for amount due as malikana cannot form ground for investigation of right to malikana. Plaintiff is only purchaser from the former maliks and his plaint must be dismissed.

The judge in appeal, on the 28th December 1842, considering the investigation of the sudder ameen incomplete and incorrect, returned the case to be retried, and directed the sudder ameen to dispose of the pleas of both parties and to decide the case on its merits.

Mirza Mahomed Sideek, sudder ameen, on the 24th April 1843, recorded judgment as follows. Motee and others must first establish their rights which they sold: these form the ground of action in this case. Plaintiff is only a purchaser of their rights (malikana) and cannot claim on the score of any deed of sale to him from them. Plaintiff is not entitled to malikana till the rights of the sellers be investigated and these cannot be enquired into in this suit. The plaint is dismissed.

An appeal was again preferred to the judge, and it was made over to the principal sudder ameen, Mahomed Rafik Khan, who affirmed the sudder ameen's order on the 9th July 1844, and dismissed the appeal, recording that his judgment must not be held to bar an action for the right to malikana.

A special appeal was preferred against this last order on the 7th September 1844. It appears clearly from a perusal of the record that plaintiff sued to establish his right to malikana, and further that the sudder ameen and principal sudder ameen did not, as directed by the judge, decide the case on its merits; moreover the principle laid down by the lower courts that the question of the right to malikana purchased by plaintiff could not be entertained till the sellers first established their right, is incorrect, and is opposed to precedents of this Court, viz. No. 20 of 1843, Nigarara Begum, appellant, *versus* Nawab Hossam Jung, respondent, decided 22d February 1844, and other cases cited by the petitioner.

ORDERED,

That the case be entered on the file and returned for trial to the principal sudder ameen after full consideration of its merits.

THE 7TH AUGUST 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 92 OF 1844.

*Regular Appeal from order of the Principal Sudder Ameen of
24-Pergunnahs.*

MUSST. SHEOO SOONDREE DIBAH, WIDOW OF MOHEIS
CHUNDER RAY CHOWDREE, (DEFENDANT,) APPELLANT,

versus

SEETANATH CHATORGEA, GUARDIAN OF HARAN CHUN-
DER MOKERGEA, SON OF ISHOR CHUNDER MOKER-
GEE, (PLAINTIFF,) RESPONDENT.

PODOMONEE DIBAH, ATTORNEY AND GUARDIAN OF SAID
HARAN CHUNDER, CLAIMANT.

BEYCHOO CHUNDER MOKERGEA AND RAJ KOMAR
BANORGEA, EXECUTORS OF MOHEIS CHUNDER ROY,
DEFENDANTS, ABSENT IN APPEAL.

PLAINT FILED 29TH SEPTEMBER 1842.

IN December 1827, corresponding with Aghon 1234, Debeeper-shaud Bose deceased, mortgaged his 8 annas share of Beydal, &c., 15 kismuts in turf Aulimpore, &c., pergunnah Mooragatcha, to Tarachand Chatorgea of Bhowanipore for 5,000 rupees. On failing to pay that amount, the mortgagee's estate was sold by the sheriff of the Supreme Court, on the 5th December 1829, and was bought by Ishor Chunder Mokergea for Sicca rupees 2,700. He was about to take possession, when, on the 10th July 1833, the estate was sold for balances due to Government. On this Ishor Chunder sued Joy Monee Dassce, widow of Deybeepershaud Bose, Tarachand Chatorgea, and Tara Mohun Mookergea, for the excess proceeds of the sale or for possession on the 26th idem. Joy Monee, in her answer to this plaint, stated, the estate was purchased by her from her

husband, and she had pledged it in the name of Tara Mohun Mookergea to Moheis Chunder Ray Chowdree, who had foreclosed and got decree against her; which was amicably settled, and he had drawn the excess proceeds from the collector's office. Moheis Chunder made the same statement. A former principal sudder ameen declared the estate to have belonged to Deybeepershaud who pledged it to Tara Chand, for whose claims it was sold, and bought by Ishor Chunder. He stated it was his opinion that Joy Monee and Moheis Chunder had colluded to draw the excess proceeds of sale; and on 27th August 1835, ordered that if the money was still in the treasury Ishor Chunder was entitled to it. If Moheis Chunder had already taken it, Ishor Chunder was at liberty to sue him for the amount excess proceeds.

Plaintiff states the excess of the sale proceeds amounted to Sicca rupees 6,485, 3 annas, 0 gunda, 3 cowries: Moheis Chunder had rupees 1,464, 13 annas, deducted by the collector on his account, and took away Sicca rupees 5,020, 6 annas, 0 gunda, 3 cowries, from the court on the 17th June 1834. He did not pay the amount due and died, leaving Beychoo Chunder Mookergea and Raj Komar Banorgea his attornies. Ishor Chunder died on the 22d Phalgun 1248, leaving plaintiff and Podomonce his attornies and an infant son, Haran Chunder. The money not having been paid, this action is brought for Sicca rupees 6,485, 3 annas, 0 gunda, 3 cowries, with interest from 17th June 1834 to the 29th September 1842, being Sicca rupees 6,448, 0 annas, 4 gundas, for 8 years, 3 months, 13 days, at 12 per cent., making a total of Sicca rupees 12,933, 3 annas, 4 gundas, 3 cowries, or Company's rupees 13,795-6-12-3, with interest to date of realisation.

The answer of Beychoo Chunder Mookergea and Raj Komar Banorgea, is in the main an admission of the pleas contained in the plaint; but it is urged that Ishor Chunder Mookergea and Moheis Chunder Chowdree came to terms after the principal sudder ameen had passed a decree in favor of Ishor Chunder, as stated in the plaint of this case; and an instalment bond, dated 26th Bhadoon 1244, was in consequence executed by Moheis Chunder Ray, setting forth that 1,000 rupees cash had been paid and two further sums were to be paid, viz., 1,600 rupees in the months of Poos and Magh 1244, and the same amount in Poos and Magh 1245.

Accordingly the whole amount due under the above instalment bond was paid and it was returned and is placed on the record.

The plaintiff, in reply, denies the instalment bond in toto; he states that when Moheis Chunder drew the excess proceeds of sale he pledged his own property as security, and that he would have petitioned the court for its release had any settlement been made between him and Ishor Chunder. That the latter never would have settled for 4,200 rupees when under the court's order he was entitled to recover a much larger sum with interest thereon.

REJOINDER.

The case between Ishor Chunder and Moheis Chunder was adjusted out of court, no application for the release of Moheis's property, which was given as security, was necessary. Plaintiff could not anticipate what might be the result of the suit which under the court's permission he was to institute, and therefore gladly came to a compromise; and Ishor Chunder lived some five and half years after permission to sue was given him, had no settlement been effected of course he would have brought an action. Plaintiff is not entitled to sue as he has not taken out probate or certificate under Acts XIX. or XX. of 1841 from the judge's court, without which he is not empowered to sue.

A supplementary petition was filed on the 27th April 1843, bringing in Sheoo Soondree, widow of Moheis Chunder Ray, and Shama Soondree, wife of Oma Churn Ray, (not forthcoming) as defendants.

Podomonee Dibah, on the 13th December 1843, petitioned the Court, saying her deceased brother, Ishor Chunder Mokergea, appointed herself and Sectanath Chatoorgea, attornies on his part, and died leaving a will. Petitioner sanctions the plaint brought by Seetanath.

Ray Hurchunder Ghose, the principal sudder ameen, on the 13th December 1843, decided as follows:—Deeepershaud's property, 8 annas share of Aulimpore, &c., 15 kismuts, was mortgaged and sold at sheriff's sale and bought by Ishor Chunder Mookergea on the 3d December 1829 for 2,700 Sicca rupees. It was afterwards sold for balance of Government revenue; he sued Joymonee in consequence, either to have the excess proceeds given to him or to be put in possession. Joymonee was also sued by Moheis Chunder Ray on a mortgage bond given by her to him. The case was amicably settled and he carried off the excess proceeds of sale.

A former principal sudder ameen held this to be a collusive transaction between Joymonee and Moheis Chunder, and declared Ishor Chunder entitled to the excess proceeds, and gave him permission to sue Moheis Chunder for the amount he had carried off. This suit has in consequence been instituted by Seetanath. The defendants Beychoo and Raj Koomar admit the pleas of plaintiff; but allege an amicable settlement was effected between Ishor and Moheis on payment of 1,000 rupees, and execution of an instalment bond, and the amount of it being paid it was returned. The point to be decided in this case is whether the instalment bond and payment of the sums referred to in it is established.

The excess proceeds amounted to 6,485 Sicca rupees, 3 annas, 0 gundas, 3 cowries, which, with interest, would, up to the date of the instalment bond, have been nearly 9,000 Sicca rupees; why should Ishor Chunder have settled at 4,200 rupees? It is not shewn on what data the instalment bond is prepared; if with reference

to the amount at which plaintiff purchased the estate, viz. 2,700 Sicca rupees, still a sum exceeding 5,000 rupees would have been due to him, including interest and costs.

Defendants plead they paid 1,000 rupees cash at the time of the instalment bond, but got no receipt for that sum, and made over the deed for 3,200 rupees to Ishor Chunder; this is most improbable, for had Ishor Chunder denied payment of the 1,000 rupees and the execution of the bond, what proof of payment could defendant have produced?

As I hold the instalment bond to be false, the payment of the 2 kists of 1,600 rupees each is not admitted.

The evidence of the three witnesses to the bond is not worthy of credit. It was drawn out at Bhowanipore and they reside at a distance of three coss and five coss from that place; but setting this aside, they do not prove it. Goberdhun Mundul and Jogissor Mundul say they were not personally acquainted with Ishor Chunder. Moheis Chunder pointed out a person to them who he said was Ishor Chunder. Under the above circumstances, I am of opinion, defendant's pleas are not proved. As to the will, I had some suspicions regarding it. The witnesses to it are not relatives of Ishor Chunder; but there is no doubt plaintiff is nearly related to him and also to the minor; and Podomonee, Ishor Chunder's sister, admits the will; and the minor is under their charge; moreover the question at issue whether any thing is due by the defendant can in no way be affected by any doubts as to the validity of the will. I accordingly decree payment of 13,795 Company's rupees, 6 annas, 12 gundas, 3 cowries, with interest on the principal from date of plaint to date being 1,003 rupees, 0 annas, 2 gundas, 1 cowrie, total 14,798 Company's rupees, 6 annas, 15 gundas, and from this date, interest on amount of decree, with costs and interest thereon, to be realised from the estate of Moheis Chunder Ray deceased. Should plaintiff desire to execute this decree before Haran attains his majority, he must furnish security. Podomonee must pay her own costs.

BY THE COURT.

The only plea of the defendant is that subsequent to the former suit disposed of by the principal sudder ameen, on the 27th August 1835, a compromise was entered into by Moheis Chunder with Ishor Chunder Mookergea, whereby the latter agreed to receive 4,200 rupees in full of all demands, of which 1,000 rupees cash was paid immediately and the remainder 3,200 rupees by two payments of 1,600 rupees each in 1244 and 1245. The Court concurring with the principal sudder ameen that the evidence adduced by the defendant in support of the alleged adjustment is utterly unworthy of credit, affirm his decision and dismiss the appeal with costs.

THE 7TH AUGUST 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 285 OF 1844.

*Regular Appeal from a decree passed by the Principal Sudder Ameen
of Bhagulpore, Mohummud Majid Khan, August 7th, 1844.*

DEBEE DUTT, APPELLANT, (DEFENDANT,)

versus

MUSST. TEJ RANEE, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, on the 27th March 1843, to recover from appellant, and two other defendants, who do not appeal, the sum of Company's rupees 7,437-3-15, principal and interest; being arrears of rent due from 1240 to 1242 Fuslee, on mouzahs Buhadurpore-chuhul-cowree, pergunnah Phurkeea, zillah Bhagulpore, and Puranpore, pergunnah Bullea, zillah Tirhoot. Permission had been obtained for the trial of both claims in the former zillah.

It appeared, that the defendants, including appellant, took a lease from respondent of these villages from 1239 to 1245 F. at a rent of 1,600 rupees per annum, and that, on making up the account, including all payments, from 1240 to the end of 1242 F., there remained the balance now claimed due to respondent.

The defendants did not deny the lease or the terms of it; but pleaded that it had been determined before the deputy collector that the rent for 1240 had been paid; and that even that for 1244 and part of 1245, had been so; that they had been dispossessed too by respondent; and had nothing to pay beyond what had been duly satisfied. They further argued, that the cognizance by the courts of the present action, was barred by Section 6, Regulation VIII. 1831, with reference to the date of the decision passed by the deputy collector.

As regards these objections, it is observed, that the asserted decision, shewing the rent of 1240 to have been paid, is not filed; that the receipt cited as shewing the rents to have been paid so late as 1245, is not a farkhuttee, or receipt in full of prior demands against defendants, but merely for money (500 rupees) paid in at the time, without allusion to any other period; that no dispossession is established; and that there is nothing in any order passed by any deputy collector, or other authority, to render the cognizance of

the suit illegal: indeed, the only order passed by the local deputy collector on the subject, expressly declares, that, under the circumstances of the case (which rendered it beyond his competency to decide) the respondent's remedy lay in an action in the civil court.

The suit was decreed in favor of respondent by the principal sudder ameen, under the above facts and evidence; and the judgment is affirmed with reference to the same, with all costs of appeal payable by appellant.

THE 9TH AUGUST 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 304 OF 1844.

Regular Appeal from decision passed by the 1st Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, August 13th, 1844.

MOORLEE DHUR JHA, ALIAS MOORLEE LAL JHA, FOR
SELF AND BABOO LAL JHA HIS MINOR BROTHER, APPELLANT, (PLAINTIFF,)

versus

SUNKUR DUTT JHA AND GOPAL JHA, RESPONDENTS,
(DEFENDANTS.)

THIS suit was instituted by appellant, on the 13th September 1843, to recover from respondents Company's rupees 9,471-9-1, principal and interest, being half of the surplus profits on mouzah Baghakhal-assileepore, in pergunnah Juncel, from 1244 to 1250 F., in virtue of a shurakutnameh, or deed of partnership, dated 15th Jeyth 1245 F.

The appellant is the nephew of Sunkur Dutt Jha and cousin of Gopal Jha, respondents. Sunkur Dutt is the teekadar or lessee of the village, and Gopal is his malzamin, or security, to rajah Chuthur Singh the proprietor.

The appellant asserts, that the lease was granted by the rajah for the benefit of the family, generally, at a reduced rent; but that the pottah having been drawn out in the name of Sunkur Dutt, his uncle, he (Sunkur Dutt) executed the shurakutnameh filed, in acknowledgment of his (appellant's) right to half the profits of the lands.

Now, the pottah was granted to Sunkur Dutt on the 8th of Magh 1244 F.; the shurakutnameh is dated the 15th of Jeyth 1245,

upwards of sixteen months afterwards; and there is no mention of, or allusion to any other member of the lessee's family in the pottah, with exception to Gopal, who is introduced only as the security of Sunkur Dutt. There is nothing, either, to shew that the lands were leased below their value, or that there was any thing in the contract differing from common transactions of the same description; and the witnesses who depose to the validity of the shurakut-nameh, and whose names attest it, acknowledge that they signed at the desire of Gopal in the absence of Sunkur Dutt, whose sanction they had not received. It is, further, observable, that *half* the profits claimed by appellant, would exceed his share, were the facts as represented by him; for Gopal, who stands in the same relationship as himself to Sunkur Dutt, would, as the son and heir of another brother (of Sunkur's) be entitled to the same portion as appellant: and, thus Sunkur, the only one under the pottah entitled to the proceeds of the estate, would be left without any thing.

In the absence of evidence to establish the claim, the suit was dismissed by the principal sudder ameen; and nothing being advanced in appeal to affect the propriety of the decision, it is affirmed, with costs payable by appellant.

THE 9TH AUGUST 1845.

PRESENT:

J. F. M. REID,
JUDGE.

PETITION No. 705.

IN the matter of the petition of raja Durup Nath Singh, filed in this Court on the 7th September 1844, praying for the admission of a special appeal from the decision of Captain Hannington, deputy commissioner under Regulation XIII. 1833, under date the 25th May 1844, confirming that of Captain Simpson, principal assistant at Hazareebagh, under date 10th May 1841, in the case of Bugut Ram and others, plaintiffs, *versus*, the petitioner, defendant. It is hereby certified that the suit was remanded for retrial, on the following grounds.

The plaintiff instituted his suit on 24th December 1838, 10th Poos 1244, to recover from the petitioner rupees 3,529-10-0, principal and interest, on a bond dated 21st Magh 1234. The defendant put in an answer on 18th June 1840, acknowledging that he executed the bond; but denied having received the money. The principal assistant decreed the claim, and the deputy commissioner confirmed the decision. The principal assistant having, without requiring the

plaintiff to file his rejoinder and without calling on the parties for proofs of their respective assertions, as required by Section 10, Regulation XXVI. 1814, decided the case merely on the evidence of the plaintiff's witnesses, the investigation is therefore considered incomplete and the case is sent back for retrial. As it has been long pending, the principal assistant will take it up, and decide it as speedily as possible. The stamp paper on which the petition of appeal is written will be returned.

THE 12TH AUGUST 1845.

PRESENT :

R. H. RATTRAY,

JUDGE.

CASE No. 3 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Behar, Hidayut Ali Khan, September 11th, 1844.

SYUD UZHUR ALI, APPELLANT, (DEFENDANT,)

versus

BABOO DEANUT RAEE, FOR SELF AND MINOR BROTHER,
BABOO JYE KURN LAI, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, on the 23d June 1843, to recover from appellant, and others who do not appeal, the sum of Sicca rupees 20,100, paid at the collector's sale, since cancelled, for the talook of Gohurpore-sindwarec, in pergunnah Kahur; with interest on the same to the same amount; being, principal and interest, Company's rupees 42,880.

The talook in question was brought to sale by the collector, for arrears of revenue, on the 13th March 1834, and purchased, as above stated, by respondent, for Sicca rupees 20,100; of which sum, under instructions from the zillah court, the collector paid to certain persons, holding decrees against one or more sharers in the estate, rupees 14,853-3-10.

On the 27th July 1836, Moossumat Bibi, as heir of Ruttun Chund Sahoo, one of the proprietors, instituted a suit to cancel the sale of 1834, on the score of irregularities in the proceedings of the collector which rendered it illegal. In 1842, a final decree was passed, in appeal, by the Sudder Court, in favor of Moossumat Bibi, with mesne profits during the period of dispossession, payable by the sale purchaser (respondent) who had held the estate some eight years in virtue of his purchase.

In 1843, respondent, having resigned the estate, brought the present action for the recovery of his purchase money, against Government and the proprietors generally of the property; the latter throwing the responsibility on the collector, with reference to the illegality of the proceedings on which the sale had been cancelled; and some of them pleading exemption from any participation in the matter in which payments had been made from the sale proceeds under instructions from the zillah court: the demand of interest too being resisted, on the ground of their not having been parties to the detention of respondent's money.

With reference to the estate having been an undivided one, and the proprietors generally responsible for claims against it,—to the appropriation of the purchase money to the satisfaction of decrees passed against one or more of them: and to mesne profits having been adjudged against respondent in the action which restored the estate to them,—a decree, with interest, was passed against the defendants for the full amount of purchase money claimed; and, on the same ground, this appeal on the part of appellant (one of the defendants) is dismissed with costs.

THE 12TH AUGUST 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 4 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Behar, Hydayut Ali Khan, September 11th, 1844.

MOOSST. BIBI, APPELLANT, (DEFENDANT,)

versus

BABOO DEANUT RAEE, FOR SELF AND MINOR BROTHER
BABOO JYE KURN LAL, RESPONDENT, (PLAINTIFF.)

THE particulars of this case have been given under No. 3 of 1845; and all that remains to be recorded in regard to it, is, that the names of the appellants excepted, there is nothing to distinguish them, and that the appeal is dismissed, with costs.

THE 13TH AUGUST 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 39 OF 1841.

*Special Appeal from the decision of Mr. W. Onslow, Officiating
Judge of Rungpore.*

LUKEENURAIN RAI, APPELLANT,

versus

KALEE MAI DIBBYA, RESPONDENT.

THE respondent states, that she and Koroonakanth Lahouree, had formerly been sued, in the zillah court of Rungpore, by the appellant, to recover possession of a holding, or jote, at a fixed rent, he alleging that he had been dispossessed of the same by them. On that occasion, the sudder ameen decreed in favor of the appellant, and the judge, in appeal, confirmed the decree on the point of possession; but authorized the present respondent, if she saw fit, to bring a suit, to enforce her alleged right to assess the appellant's land at a full rate of rent. The respondent farther stated, that in the execution of the above decree, the appellant had taken possession of 820 beegahs and 5 cottahs of land more than he was entitled to. She accordingly sued him in the zillah court, on the 2d April 1839, to assess his land, amounting to 1870 beegahs, at the pergunnah rates.

The appellant answered as follows. The land which the plaintiff sues to assess at a full rate is an istumraree tenure. It was granted by the plaintiff's father-in-law, Kishenkanth Rai, to Brijram Mundul in 1168, at a jumma of rupees 150-1-0—Brijram sold this tenure to Beedaysee Sirdar, from whom the appellant bought it in 1223. On getting possession, he found that the ryots of the zemeendar had got hold of 350 beegahs of the above land. He mentioned the fact to the zemeendar's manager, who measured the lands and sent the measurement papers to his master, Rooderkanth Rai, the plaintiff's husband. He finding that the story was true, wrote a letter to his manager, ordering him to give to the appellant, in exchange of the appropriated land, 350 beegahs situated in the village Nuleecha and others. He also confirmed in the same

letter, the istumraree grant in favor of the appellant. The manager executed his master's orders; but the plaintiff afterwards dispossessing the appellant, he sued as is stated in the plaint. It is not true, that the appellant has got possession of more land than he is entitled to; and if it were, the proper course for the plaintiff would be, to sue separately for this land, alleged to have been taken in excess of what the decree allowed.

On the 27th September 1839, the principal sudder ameen dismissed the suit with costs, regarding the letter of plaintiff's husband to her manager, to be perfectly genuine, the judge in the former case, expressing the same opinion. The principal sudder ameen referred the plaintiff to a separate suit, for the land which she alleged had been taken possession of by the defendant, in excess of what was allowed by the decree.

The judge, Mr. William Onslow, on the 27th July 1840, reversed the above decree, being of opinion, that the letter founded on was not genuine.

A special appeal was admitted by Mr. D. C. Smyth on the 16th January 1841, to try whether the documents filed to uphold the right to pay at a fixed rent, be valid or not, inasmuch as the decrees of the different courts differ in this respect.

The only point to be tried in this case, is, whether the title of the appellant to hold at a fixed rent, be valid or not, the principal sudder ameen having properly, as we think, regarded the respondent's claim to assess more land than that which the alleged grant comprises, to be a separate and distinct ground of action?

The deed of sale executed by Beedaysee in favor of the appellant in 1223, gives the history of the tenure as described in the answer filed by the appellant in the lower court. We see no reason to doubt the fact, that this deed of sale was executed, and we think it highly improbable, that the tenure should have been described, as it is described in that deed, if it had not been in truth an old istumraree tenure. We are likewise clearly of opinion, that the letter addressed by the husband of the respondent, to his manager, on the 15th of Magh 1224, is genuine. This letter recognises the original grant, and confirms it in the person of the appellant. We are farther of opinion, that the order of the respondent, herself, to her manager, dated the 16th of Bysakh 1238, in which she authorizes the release from attachment, of the tenue under litigation, and in which she admits the authenticity of the above letter, is a genuine document. It seems natural, that Rooderkanth whose other wife, was the appellant's sister, should have favored him, and we ascribe the subsequent disputes that took place concerning the tenure under litigation, to the occurrence of a family quarrel. We accordingly decree for the appellant, with costs, reversing the decision of the judge, and confirming that of the principal sudder ameen.

THE 19TH AUGUST 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 228 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen,
Ram Lochun Ghose, of Zillah Nuddea.*

GUNGA NARAIN PAUL CHOWDREE, AND OTHERS,
APPELLANTS, (PLAINTIFFS,)

versus

MOOST. OOOJUL MUNEE DASEEAH, RESPONDENT,
(DEFENDANT.)

*Pleaders, Baboo Prushun Koomar Thakoor for Appellants, and
Moonshee Bunsee Buddhun for Respondent.*

THE suit is for Company's rupees 6909, 11 annas, 10 gundahs,
a debt on bond.

The appellants' mother, the original plaintiff, set forth in her
plaint, that she and respondent were nearly related, being widows
of two half brothers. That she lent to respondent 5001 rupees on a
bond duly attested, unknown to her son, because of existing family
disputes regarding ancestral property. That the bond was dated
14th Asin 1235 B. Æ. That the money had not been paid. That
respondent had been induced to deny the debt; and that she had
been prevented suing sooner by having accompanied her son to
Serampore to evade process of execution of a decree adjudged to
respondent in the Supreme Court against him.

The respondent, in her answer, denied the debt, declared the
bond a forgery, and the whole story a fabrication. In proof of
which she referred to their being at daggers drawn even into the
Supreme Court; and filed a deed given by plaintiff's son, bearing
the very date of the bond, 14th Asin 1235 B. Æ; in which he is
stated to have paid to respondent on that day 5000 rupees, and to
engage to pay the remainder of the amount due of the decree she
had obtained, on condition of her stopping further execution of the
judgment in her favor.

The case was originally tried by the zillah judge, Mr. Nisbett,
and claim dismissed, he deeming the transaction most improbable,
for the reasons detailed in his decision, and because the bond was
illegal, not written on paper of the prescribed stamp.

In appeal to the Sudder, Mr. Warner returned the case for
retrial, observing that the judge should have allowed the plaintiff
to get her bond duly stamped on paying the legal penalty.

The case was then tried by the principal sudder ameen, who, much on the same reasoning as the zillah judge, disbelieved the transaction, and dismissed the claim.

JUDGMENT.

It is notorious the parties were at dire enmity, when the debt is said to have been incurred. The plaintiff produced not a particle of proof that she possessed "streedhun," or independent property which enabled her to grant such a loan—no relative on either side was present. The witnesses were, two out of three, servants of the plaintiff's son, and it is incredible that the plaintiff and respondent should have appeared openly before them and others said by the witnesses also to have been present. Incredible too that plaintiff should have lent such a sum without any the least security, and equally that respondent should have borrowed it at the very time she had a decree out in execution against the plaintiff's son. The truth or otherwise of the deed of engagement filed by respondent has very properly not been entered upon by the principal sudder ameen.

The decision of the principal sudder ameen is confirmed, and the appeal dismissed with full costs.

THE 20TH AUGUST 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 283 OF 1842.

*Regular Appeal from the decision of Mooljee Julul Oodeen Mahomed,
Principal Sudder Ameen of Zillah Mymensing.*

ABDOOL HUFEEZ, PAUPER, PLAINTIFF, (APPELLANT,)

versus

THE COLLECTOR, KISHOOR KISHWUR CHUCKER-
BUTTEE, AND OTHERS, DEFENDANTS, (RESPONDENTS.)

*Appellant's Pleaders, Rama Purshad Raee, and Uzmud Oola.
On the part of the Collector, Prushan Koomar Raee, and for the
other respondents, the purchasers, Ghoolam Sufidur and Turik
Chundur Raee.*

SUIT laid at 14,323 Company's rupees, 15 annas, 0 pie, to annul an auction sale by the collector of the district, made under orders from the judicial court of the principal sudder ameen in execution of a decree of court.

The appellant's statement is, that the property sold belonged to his brother, deceased, who had by deed given it to him; that the

sale was in satisfaction of a decree in favor of creditors of his brother; that the collector was directed to sell a specific portion of the estate, viz. 10 cowries, instead of which he sold the whole right of his appellant's brother, in consequence of which the purchasers claimed possession on 3 annas, 15 gundas, over and above the 10 cowries, and which were in litigation when the order for the sale was made, and on that very account had been exempted from the sale, and which were decided in his favor previous to the sale. The respondents argued that as the sale had been upheld by the principal sudder ameen, and afterwards by the superior courts on summary appeal, it was not now open to question; that the collector had authority to use his discretion in making such sales, and if the whole of the rights of appellant's brother, had not then been sold, they would eventually in satisfaction of the decree.

The principal sudder ameen dismissed the claim of appellant on the ground, that he himself had issued the order for sale, and although he had specified 10 cowries to be sold of appellant's brother's estate, he intended that all which remained of the estate appertaining to appellant's brother should be sold, and he had therefore confirmed and upheld the sale at the time. He rejected the appellant's claim as donee of his brother, because the deed of gift had not been established in any court.

JUDGMENT.

The law under which the sale was made, is Clause 3, Section 4, Regulation VII. 1825, and the revenue authorities are required "*to select for the sale, any part of the lands included in the statement*" received from the judicial authority. In the instance under consideration, the collector took upon himself to sell all the rights of the proprietor, when he was directed to sell a specific portion; and he thus, though unwittingly, sold many times more than the portion specified. The sale therefore was unquestionably illegal; and this the Government pleader has very properly admitted, as desired by his client.

True, the claim of appellant as donee has never been established in any court: so neither has it ever been invalidated in any court: therefore the principal sudder ameen should have required evidence on the point before rejecting it.

Ordered, that the case be returned to be replaced on the file, and evidence taken to prove or disprove the deed of gift; and then the suit be re-investigated and decided.

THE 20TH AUGUST 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 305 OF 1844.

*Regular Appeal from a decree passed by the Principal Sudder Ameen
of Patna, Ephraim Da Costa, August 22d, 1844.*

MOOSST. DHOOPPOO, APPELLANT, (DEFENDANT,)

versus

MUNOO LAL, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent on the 5th May 1843, to recover from appellant possession of a 4-annas' share of mouzah Tilwur, in pergunnah Bheempore, under a lease granted by the proprietor; with wasilat, or mesne profits, for 1250 Fuslee: the whole estimated at Company's rupees 6,073-3-4-15.

The question to be determined, was, how far, if at all, a lease obtained by respondent from Umjud Hosein, the proprietor of the lands, was affected by another asserted to have been granted to the husband of appellant; whose possession had been summarily upheld by the magistrate, under Act IV. of 1840, by an order passed on the 23d February 1843.

It was established to the satisfaction of the lower court, that the rights of appellant's husband, founded on the pottah upon which she (appellant) now rests her claim, had ceased before his demise; and that there was nothing that might legally interfere with respondent's occupancy, so long as an advance of 6001 rupees, made by him at the time his lease was granted, should remain unliquidated.

A decree for the wasilat, and a conditional decree for possession (dependent on the liquidation of the advance aforesaid) was passed accordingly in favor of respondent; which decree, the Court (not seeing any reason to question the justice and propriety of it) affirm, dismissing the appeal against it. All costs to be paid by appellant.

THE 20TH AUGUST 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 306 OF 1844.

Regular Appeal from a decree of the Principal Sudder Ameen of Patna, Ephraim DaCosta, passed August 22d 1844.

MOOST. DHOOPPOO, APPELLANT, (DEFENDANT,)

versus

AJOODHIEA PURSHAD AND BULBHUDDUR MISR,
RESPONDENTS, (PLAINTIFFS.)

THIS suit was instituted by respondents on the 8th September 1843, to recover, as proprietors, a 4-annas' share of mouzah Tilwur, in pergunnah Bhempore; with wasilat, or mesne profits, for 1250 Fuslee: the whole estimated at Company's rupees 19,670-5-9-15.

On the 16th June 1842, respondents purchased the lands claimed by them, at a sale held by the collector, under instructions from the zillah court, in execution of a decree in favor of Hurkhoo Bibi, against Umjud Hosein, the proprietor. The present suit was brought by them (respondents) to cancel an order passed summarily by the magistrate, under Act IV. of 1840, maintaining appellant in possession of these lands; and to set aside a claim on her part to hold them under an asserted lease granted to her deceased husband, by which she was entitled to occupancy till an advance of 3000 rupees and a debt of 9000, for which last a bond had been given, should be satisfied.

As in the preceding case (No. 305) it was established to the satisfaction of the lower court, that the rights of appellant's husband, founded on the potah upon which she (appellant) now rests her claim, had ceased before his demise. The debt of 9000 rupees too was not considered to be proved, and was rejected: and nothing appearing to oppose respondents' claim, a decree was passed in their favor; with possession of the lands in dispute, on either depositing in court or paying to Munnoo Lal, the ijarehdar or lessee of No. 305, the sum of 6001 rupees, being the amount advanced by him for his lease, to the then proprietor, Umjud Hosein. Wasilat had already been adjudged in the former suit.

Concurring in the view of the case taken by the principal sudder ameen, and nothing appearing to affect this in appeal, the decree of the 22d August last is affirmed, and the appeal against it dismissed, with costs payable by appellant.

THE 21ST AUGUST 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 235 OF 1842.

Special Appeal from the decision of the Judge of Zillah Mymensingh.

HUR KISHWUR CHOWDREE, DEFENDANT, (APPELLANT,)

versus

RAM DOOLAL LUSHKUR, PLAINTIFF, (RESPONDENT.)

Pleders, Mr. Sevestre and Abas Alee for Appellant; and Bunsee Budun and Mr. Waller for Respondent.

THE plaintiff sued the mother of the appellant for the sum of 5000 Sicca rupees, principal of a bond debt, incurred by her to pay the amount of several decrees obtained against her deceased husband, and for which, the estate he left was put up for sale. She gave no answer, and a decree was obtained in favor of plaintiff. In execution of the decree, on a request of the decree holder, an order was passed for the sum decreed to be paid by instalments out of the proceeds of the deceased proprietor's estate, which was under the Court of Wards; the appellant then being a minor. The whole transaction then came to the knowledge of the collector, who discovering fraud and collusion between the plaintiff, the mother, (who had been found disqualified,) and the guardian, Ram Chunder Sircar, father of the mother, reported to the revenue commissioner, and was directed to apply for a review of judgment, and eventually obtained it, on the ground that the guardian should have been sued.

The plaintiff then associated the guardian in the suit, Gourree Kant Dhur, who had been appointed after dismissal of the former guardian, Ram Chunder Sircar, on detection of his malpractices. A decree was again given in plaintiff's favor, and the property left by the minor's father made liable on the ground that the bond, though given by the mother, was so done before, and with the consent, of the guardian, and to save the estate of the minor. The decree by the principal sudder ameen was confirmed in appeal by the judge. The special appeal was admitted on account of doubts as to the legality of the bond given by the disqualified mother, and on consideration of the whole case.

JUDGMENT.

The bond on which the claim is founded, was given by the mother of the minor, who was at the time under the Court of Wards. She had no authority to borrow or disburse on account of the minor. It is urged she borrowed to save the minor's estate, and with consent of the guardian of the minor. The guardian, however, had no more authority than she possessed, and therefore his knowledge and consent were of no avail. Under Section 19, Regulation X. 1810, even the manager is prohibited from paying any debts although adjudged, previous to giving intimation to the collector, who too must first report the same to the Court of Wards, and obtain their sanction for its liquidation.

Therefore the demand on the estate of the minor, a ward of court, is illegal; and we accordingly reverse the decisions of the lower courts, and decree the appeal with full costs.

We do not enter into the fact of the loan, as the point in appeal, before us, is simply the liability of the estate of the minor.

The decision we now give is in accordance with those given in the cases of Bustom Churn Dos, *versus* Ranee Soodur Mookce, decided on the 15th December 1840, and rajah Mudoosoodun Narain and ranee Soodur Mookce, *versus* Nur Hurree Dulal, &c., decided 23d December 1843.

THE 27TH AUGUST 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 28 OF 1845.

Special Appeal from a decision passed by the 2d Principal Sudder Ameen of Tirhoot, Syud Ushruf Hosein, November 16th, 1843 ; affirming that of the Sudder Ameen, Syud Sulamat Ali, passed July 16th, 1842.

KOULA PUT SAHOO AND RAM JEEWUN LAL,
APPELLANTS, (PLAINTIFFS,)

versus

MYMUNUT ALI KHAN, RESPONDENT, (DEFENDANT.)

THIS suit was instituted by appellants, on the 8th July 1841, to recover from respondent Company's rupees 356-2, principal and interest, the amount of money paid as an advance for land : granted on lease, from which lands appellants were dispossessed before the sum advanced was realized, in contravention of their pottah.

It appears, that, in 1229 Fuslee, a pottah for certain lands was granted by respondent to Sewun Sahoo and Jectaram, the fathers

respectively of Koula Put Sahoo and Ram Jeewun Lal, appellants, that this pottah extended the lease to 1231 F. and, further, till Sicca rupees 250, paid in advance by the lessees, should be repaid from the usufruct; that the lands continued in possession of appellants till 1246 F., when they were ousted by respondents; that in 1247 F. the lands were attached and resumed by Government, and, in spite of a protest on the part of appellants, settled for with respondent,—soon after which the present action was brought, for the unsatisfied advance made by appellants.

The suit, as before stated, was instituted on the 8th July 1841, or 1248 Fuslee, a period of 17 years having elapsed since 1231 F. the closing year of the lease, specifically mentioned in the pottah held by appellants. Determining that year (1231) to be the date of the cause of action, the sudder ameen decided, that, under the law of limitation, this claim could not be heard, and dismissed it. The principal sudder ameen, concurring in the view taken by the inferior court, affirmed the dismissal.

A special appeal having been preferred to this Court, it appeared, that, so late as the 8th November 1838, or 1246 F., respondent had granted a bond, for 71 rupees, to appellants, stating this sum to be part of the advance now claimed by them. This was deemed by the Court to bring the cause of action within three years of the date on which it was instituted; and the appeal was admitted.

Concurring in this, all that remains, is, to refer the case back to the zillah court, to be disposed of on its merits; and this is hereby ordered accordingly. The usual observances to be followed in regard to stamps and costs.

THE 30TH AUGUST 1845.

PRESENT:

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 307 OF 1844.

*Regular Appeal from the decision of Moolavie Muneerudddeen
Mohumud, 2d Principal Sudder Ameen of Chittagong.*

KEYLASCHUNDER KANOONGO AND NEELMUNNY
KANOONGO, APPELLANTS,

versus

COLLECTOR OF CHITTAGONG, SHAIKH OOBADÉ
OOLLA KHAN, HUMEED OOLLA KHAN AND THA-
KOOR BUKHSH JUMADAR, RESPONDENTS.

THE appellants instituted this suit in the zillah court of Chittagong on the 19th July 1843, to reverse the sale of their

permanently settled estate, turf Sireemunt Ram Kanoongo, made by the collector, on the 30th May 1842, under the provisions of Act XII. of 1841, for a balance of rupees 1,925-3-2, due for the years 1247 and 1248. The following are the objections which the appellants made to the sale. That fifteen full days did not elapse, from the date on which the notice was served, up to the date of sale, this being in contravention of Section 8 of the law, under which the estate was sold. That if the collector had made a set-off for money due to plaintiffs, for land taken in excess from their estate, by the revenue authorities as nowabad land, or land not included in the settlement; and also for money due to them as a refund for illegally resumed rent-free land, there would not have remained any balance against the estate. That the ostensible purchasers of the estate bought it for Humeed Oolla Khan, who is a deputy collector, and cannot therefore legally buy an estate.

The collector, in his defence, stated, that the objection respecting the notice not having been served full fifteen days before the sale, was not brought to the notice of the commissioner, and that therefore, according to Section 25 of Act XII. of 1841, it could not be received by the court. Besides, the sale had been effected, under Section 3 of Act XII. of 1841, although advertisements under Section 8, also, had been unnecessarily made. That the claim to compensation on account of lands taken from the estate, could not according to Section 7 of Act XII. of 1841, bar a sale. That the money claimed as a refund on account of illegal resumptions was not at the credit of the plaintiffs. Nevertheless, on the petition of Allee Mohumud Shikdar, in whose name this money stood credited, although the whole sum claimed could not be brought to the credit of the estate in arrears, until a final adjustment of accounts took place, yet the sum of rupees 510 was so credited. Finally, if every deduction claimable by the plaintiffs had been made, it would have amounted to rupees 810-6-1, [exclusive of the sum credited to the estate] and this sum did not nearly cover the balance against the estate.

Oobade Oolla Khan and Thakoor Buksh Jumadar, answered in substance, to the same effect as the collector.

Humeed Oolla Khan, who is the son of Oobade Oolla Khan, denied that he had any thing to do with the sale.

On the 3d September 1844, the principal sudder ameen dismissed the suit, with costs, because the claim to deductions was according to Section 7 of Act XII. of 1841, no bar to the sale; and that in like manner, the objection to the sale, on the ground, that fifteen full days had not elapsed, from the date of notice, to that of sale, was invalid, as it had not been specifically brought to the notice of the commissioner. The allegation, that the deputy collector Humeed Oolla Khan, was the purchaser, was not proved.

The sale in this case, ought, as is stated by the collector in his answer, to have been carried into effect, under the provisions of Section 3 of Act XII. of 1841, and according to the same authority, it was so carried into effect, although notices under Section 8 also, were served. Had this double serving of notices, applicable to different cases, been brought to the notice of the commissioner; or had it been stated to that authority, that a notice ought not to have been served under Section 8 at all, and he had given no redress, it admits of question, whether the sale might not have been set aside by a court of justice. In the absence of any intimation to the commissioner, as to what contravention of law had taken place, the interference of a court of justice is barred. On this point, therefore, there is no ground for reversing the sale. In like manner, Section 7 of Act XII. of 1841, bars the court from receiving objections of the kind urged by the appellants on the score of their being entitled to certain sums of money from the revenue authorities. There is no proof that Humeed Oolla Khan was the purchaser. I accordingly reject the appeal, with costs, confirming the decision of the principal sudder ameen.

THE 1ST SEPTEMBER 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 308 OF 1844.

*Regular Appeal from a decision passed by the Principal Sudder
Ameen of Behar, Hedayat Ali Khan, August 24th, 1844.*

SHUNKER LAL, NUKPHOPHA, GYAWAL, APPELLANT,
(PLAINTIFF,)

versus

KISHUN LAL CHOWDHREE, RESPONDENT, (DEFENDANT.)

THIS suit was instituted by appellant on the 10th April 1843, to recover from respondent Sicca rupees 13,000 (Company's rupees 13.866-10-0) under an ikrarnameli, or deed of agreement, dated the 1st Bysakh 1238 Fuslee, executed by Gopal Chund Chowdhree, father of respondent.

Suhur Chund and Mool Chund were brothers, sons of Moost. Chumelce. Suhur Chund, not having any male issue, adopted the son of Mool Chund, Gopal Chund Chowdhree. During the subsequent absence of Mool Chund, in Gujrat, certain lands in which he had a joint family interest, were mortgaged by Suhur Chund to rajah Mitrajeet Singh; from whom, Suhur Chund having died, they were redeemed by Moost. Chumelce, with money borrowed from one Anundee Sithaen, to whom they were again pledged in mortgage. On his return home, Mool Chund, disapproving of these transactions, paid Anundee the amount borrowed from him, and redeemed the estate. Mool Chund died. Appellant then came forward; and, representing himself to be the adopted son of Mool Chund, declared, that, for the money paid, as above stated, to redeem the mortgage of Moost. Chumelce to Anundee, Gopal, as the representative of Suhur Chund, by whom the first mortgage had been made, had executed an ikrarnameli in favor of Mool Chund for the sum now claimed, to which sum, as the son by adoption, and consequently heir of Mool Chund, he (appellant) was legally entitled.

Now, in another suit lately decided in the zillah, the same pretension to adoption by Mool Chund, had been advanced by appellant, and had been disproved: the ikrarnameli too, asserted to have been executed by Gopal, and promised to be produced, was not forthcoming or shewn to exist. Under these circumstances, the claim of appellant was dismissed, with costs.

Nothing appearing in appeal to call for interference with the judgment of the lower court, the same is affirmed; with all additional costs chargeable to appellant.

THE 2D SEPTEMBER 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 32 OF 1845.

*Regular Appeal from a decree passed by the Principal Sudder Ameen
of Behar, Mehdayut Ali Khan, September 19th, 1844.*

MEER LOOTF ALI, ALIAS MEER BUKHSHEE, APPELLANT,
(DEFENDANT,)

versus

JAFUR HOSEIN, (DECEASED,) MOOST. KUNEEZ BUTOOL,
WIDOW OF DITTO AND GUARDIAN OF SHEIKH FUZI
HOSEIN, MINORSON OF DITTO, MOOST. LOOTFONISSA AND
MOOST. JUMELONISSA, DAUGHTERS OF DITTO, BHOLA
RAM, AND KISHUN DIAL, RESPONDENTS, (PLAINTIFFS.)

THIS suit was instituted by respondents on the 7th March 1843, to recover from appellant and others (defendants who have not appealed) possession, as proprietors, of mouzah Puttec-kulan, in pergunnah Jeela, held in farm by appellant, on payment to him (appellant) of the advance made by him on obtaining the lease; with arrears of rent due by appellant from 1239 to Magh 1250 Fuslee, the whole estimated at Company's rupees 9,659-1-0.

The facts of the case, are briefly these: Mehdee Ali Khan, the proprietor, sold the estate conditionally (by lybilwufa) to Jugmohun Das and Hurkishun Das, having previously let it in farm to appellant, on an advance by the latter of 1,500 rupees. The conditions not having been complied with towards the Dasses, they applied to the court, and obtained a judgment under which they became proprietors, but without a right of possession till the advance made by the lessee (appellant) should be satisfied. They subsequently sold the estate, $\frac{1}{4}$ th to Jafur Hosein, and $\frac{3}{4}$ ths to Bhola Ram and Kishen Dial (respondents,) and the claim on the part of these persons, is, as above set forth. The rent had been altogether withheld from them.

In the lower court, the appellant did not attend, either in person or by vakcel. He acknowledged the notice issued by the court; and subscribed it, with a promise of attendance in fifteen or twenty days, should the matter not be previously amicably adjusted. He did not appear however, and there was no adjustment; and on the evidence adduced by respondents, a decree was passed in their favor.

The appeal preferred against the judgment of the lower court, falling within the rule prescribed by the Court's Circular Order, No. 141, of the 12th March 1841, must necessarily be dismissed: in other words, the appellant, having 'wilfully neglected to attend in the lower court,' cannot be admitted to plead here in defence of what he had there left undefended. The appeal is dismissed accordingly: all costs being payable by appellant.

THE 2D SEPTEMBER 1845.

PRESENT:

A. D I C K,

JUDGE.

CASE No. 85 OF 1842.

Special Appeal from the decision of Mr. Skipwith, Additional Judge of Chittagong.

GOVERNMENT SALT AGENT, APPELLANT, (PLAINTIFF,)

versus

MATADEEN THAKOOR, AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

Pleader for Appellant, Baboo Prusun Koomar Thakoor, Government Pleader, Moonshee Ghoolam Sufilur, for Respondents.

SUIT laid at Company's rupees 2,442, 4 annas, 10 gundahs.

The appellant sues to cancel a soluhnameh, or deed of adjustment on which a decree was given, by which he was deprived of his claim on the amount of the decree, on the ground that the soluhnameh was collusive. He states, that the Government commercial agent of the time, sued one of his gomashthas, or factors, together with two of his sureties, for the sum of 11,000 Sicca rupees, and obtained a decree of court with full costs. While the decree was under execution, the widow of one of the sureties got a decree against the respondents, Matadeen, &c, for Company's rupees 2,442, 4 annas, 10 gundahs, in the zillah court; and it was attached on account of his (appellant's) decree. That in consequence Matadeen, &c., appealed the case, and, colluding with the widow, got the case referred to arbitrators, and then filed the soluhnameh in question, and obtained a decision on it. The fraud remained unknown to the Government authorities for five years. Then on the part of Government an application was made to the zillah court to have the soluhnameh annulled, and the Government decree executed against Matadeen, &c. It being rejected, a summary appeal was preferred to the

Sudder. The lower court's order was upheld, and the Government was told that until they took steps to have the soluhnameh cancelled, they could have no claim on Matadeen, &c. In consequence, this suit was instituted.

The principal sudder ameen, deeming the soluhnameh collusive, decreed in favor of plaintiff. In appeal, the zillah additional judge, reversed the decision of the principal sudder ameen, and dismissed the suit of plaintiff; because on the soluhnameh a decree of court had been given, which had become final. A special appeal was admitted by the Sudder Court, Messrs. Tucker and Reid, on the supposition that the Government having been no party to the suit which was decided on the soluhnameh, the zillah judge was wrong in considering the decree final.

JUDGMENT.

The soluhnameh in question was duly accepted as good and valid by a competent judicial court, and a decree regularly passed thereon, and that not having been appealed became final. No suit can be entertained to call in question what has been already regularly decreed. If the appellant deemed the soluhnameh collusive to deprive Government of the amount attached, as alleged, his proper and only course was to apply to the court which passed the decree on the soluhnameh, for a review of judgment—no other authority can impugn that decision. Therefore the judgment of the additional judge is affirmed, and the appeal dismissed with costs.

THE 3D SEPTEMBER 1845.

PRESENT :

J. F. M. REID and

A. DICK,

JUDGES,

and

E. M. GORDON,

TEMPORARY JUDGE.

CASE No. 130 of 1842.

Special Appeal from the decision of Mr. E. Bentall, Judge of Jessore.

SHEETULCHUNDER GHOSE, APPELLANT,

versus

BEYROCHUNDER MUJMOOADAR, MADHUBCHUNDER
MUJMOOADAR, AND OTHERS, RESPONDENTS.

THE appellant states, that the following parties were proprietors of the joint talookeh, Burfutte Jungpore:

Futteekchunder was a sharer to the extent of	12	As.
Nyankishen Ghose, the ancestor of Ramdhun Ghose, &c. to the extent of	1 $\frac{3}{4}$	"
Ram Kishen Ghose, the father of the appellant, was a sharer to the extent of	2 $\frac{1}{4}$	"
	<hr/>	
	16	"

Muteeoolla Karadar sued the above and others, for dispossessing him of certain lands, belonging to the above talookah, of which he had a lease. He recovered possession by a decree. Futteekchunder, dying, left his property in equal shares to his four sons, Beyrochunder, Madhubchunder, Jadubchunder, and Muheemachunder—Mutteeoolla sued separately for mesne profits, bringing the suit against Beyrochunder the eldest son of Futteekchunder, against the present appellant, and against Kishenhurree Ghose the heir of Nyankishen Ghose, and others. Whilst the suit was pending, Muteeoolla dying, his son came in his place, and obtained a decree. Towards the satisfaction of that decree, a separate property of the appellant being attached, as well as the joint talookah Burfuttee Jungpore, he objected to the sale of his separate property, and got it released from attachment, by an order of the Sudder Dewanny Adawlut. Beyrochunder, through his three younger brothers, objected to the sale of 9 annas, out of the 12 annas share, as these belonged exclusively to the younger brothers. He stated, also, that the remaining 3 annas share (of the 12 annas share) was held in mortgage by Dwarkanath Tagore. The Sudder Dewanny ordered the sale of the 3 annas share under mortgage, and eventually the 4 annas share, exclusive of the 9 annas share. Upon this, the appellant, to save his share, satisfied the decree, and brought the present suit in the zillah court of Jessore, on the 4th March 1840, against the sharers to the extent of 13 $\frac{3}{4}$ annas, thinking, that he could recover what was due from them, in the proportion of their shares. The action was laid at rupees 2,915-9 annas 11 gundas.

The respondents, Madhubchunder Mujmooadar, and Jadubchunder Mujmooadar, and Moheemachunder Mujmooadar, answered in substance, that not having dispossessed Mutteeoolla, and not having been included in the suit for mesne profits, the action could not lie against them.

On the 23d January 1841, Beydnath Sein, the principal sudder ameen, decreed for the plaintiff, with costs, and interest from the date of suit, upon the ground, that the action lay against the zemindars, who were parties to the original suit for dispossession, or their heirs.

The judge, on the 5th January 1842, modified the above decree, by exempting from liability, the three brothers Madhubchunder,

Jadubehunder and Moheemachunder, because they had not been parties to the suit for mesne profits, and because their property had been exempted from sale, in the proceedings that were held, in the case, in which execution was applied for, in the decree for mesne profits.

A special appeal was admitted by Messrs. Tucker and Reid, on the 21st April 1842, because the judge had released the 9 annas share from liability, on account the said 9 annas having been released on a summary enquiry, in the course of the satisfaction of a decree; such a summary award being an insufficient ground of decision in a regular suit; and because it ought to be determined, whether the proprietors of the 9 annas could be released, by reason of their not being parties to the mesne profits case, seeing that the decree was against their father, in the original suit for dispossession.

We are of opinion, that as Futteekchunder, the father of the proprietors of the 9 annas, was a defendant in the original case for dispossession; and as to save his own share from sale, the appellant satisfied the decree in the case for mesne profits, he was entitled in law and equity to bring the present suit against those sharers, who did not satisfy the decree. We accordingly decree for appellant, with the costs of this Court, reversing the decision of the judge, and confirming that of the principal sudder ameen.

THE 9TH SEPTEMBER 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 34 OF 1845.

Regular Appeal from a decree of the Principal Sudder Ameen of Behar, Hedayut Ali Khan, passed December 17th, 1844.

BURM PURKAS DAS, APPELLANT, (DEFENDANT,)

versus

SYUD ABDOOLLAH, RESPONDENT, (PLAINTIFF)

THIS suit was originally instituted, by respondent, to recover from appellant, and another defendant who does not appeal, 150 beegahs of land, belonging to the estate of Gungta-Rutnoo; but a supplemental plaint extended the claim to 273 beegahs, with wasilat, or mesne profits, from 1239 to 1245 Fuslee: the whole estimated at Company's rupees 23,123-14-4. On a protest from appellant against this valuation, the zillah court [under Regulation XIII.

1808] instituted an enquiry; the result of which was, a reduction in the estimate to Company's rupees 11,065-13-3-10.

The evidence, with exception to a few documents scarcely material to the issue, was furnished by witnesses professing to be acquainted with the locality and the relative rights of those concerned. This not being altogether satisfactory, and the lands lying at no great distance, the principal sudder ameen proceeded to the spot, and drew out a map of it, in the presence of the vakeels of both parties, with such explanatory notes and facts as were obtainable from residents and existing land marks. This map, attested as correct by both vakeels, enabled the lower court to dispose of the case, by a decree, in favor of respondent, for 159 beegahs of the land claimed, with wasilat on the same from 1240 to 1245 Fuslee.

Against this judgment, both parties appealed; but nothing appearing beyond what had been before filed and considered, and the decision being deemed just and equitable, it was affirmed, with costs payable by appellant.

THE 9TH SEPTEMBER 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 51 OF 1845.

Regular Appeal from a decree of the Principal Sudder Ameen of Behar, Hedayut Ali Khan, passed December 17th, 1844.

SYUD ABDOOLLAH, APPELLANT, (PLAINTIFF,)

versus

BURM PURKAS DAS, AND BULRAM DAS, RESPONDENTS,
(DEFENDANTS.)

THE particulars of this case have been exhibited under No. 34; and all that is required to be noted here, is, that the order passed on that appeal necessarily applies equally to this; which is rejected, with costs chargeable to appellant.

THE 11TH SEPTEMBER 1845.

PRESENT :

R. H. RATTRAY,
JUDGE.

CASE No. 102 OF 1845.

*Regular Appeal from a decree passed by the Principal Sudder
Ameen of Behar, Hedayut Ali Khan, January 8th, 1845.*

LALA HIMMUT SUHAEE AND OTHERS, SONS OF JYE
MUNGUL SINGH DECEASED, APPELLANTS, (DEFENDANTS,)

versus

PEM NURAIN SING AND OTHERS, SONS AND BROTHERS OF
BABOO BHOWUN SINGH, DECEASED, RESPONDENTS,
(PLAINTIFFS.)

THIS suit was instituted by respondents on the 10th January 1844, to recover from appellants Co.'s rupees 9,736-3-8, principal and interest, lent under a bybitwufa, or deed of conditional sale, by Bhowun Singh to Jyemungul Singh, and never repaid or otherwise satisfied.

It appears that mouzah Deona-Goreil was conditionally sold to Bhowun Singh by Jye Mungul Singh on the 9th of Poos 1240 F. for 5,800 Sicca rupees, the money to be returned by the full moon of Jeyth 1244, or, in failure, the estate to be considered as forfeited. The interest was duly paid; but up to 1247 F. the principal remained wholly unsatisfied and subsequently the payment of interest ceased altogether. Respondents applied to the local court for a foreclosure under Regulation XVII. 1806; but before their proprietary right was established, appellants threw the estate into arrears, and it was brought to public sale by the collector. The surplus proceeds were applied for by both parties, and appellants being the successful applicants, respondents instituted the present action.

Appellants assert that the debt claimed has been paid in full and that they hold receipts for the money; but that these receipts being on plain paper they cannot file them in evidence of the truth of their assertion.

The principal sudder ameen, under the facts and circumstances above stated, passed a decree in favor of respondents, which, with reference to the same, is hereby affirmed, with costs payable by appellants.

THE 12TH SEPTEMBER 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 284 OF 1844.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Majid Khan, August 9th, 1844.

BHEKHAREE SINGH AND ROOPUN SINGH, APPELLANTS,
(DEFENDANTS,)

versus

MOOST. TEJ RANEE, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, on the 27th March 1843, to recover from appellants Company's rupees 9,882-10-0, amount of collections made by them in mouzals Annoolee-khoord and others, from 1246 to 1249 Fuslee, both years inclusive.

The substance of the plaint was as follows:—Annoolee-khoord and other villages belonging to respondent, had been attached, with a view to resumption, by the collector; and intermediately a settlement had been summarily made with respondent for the lands. In Aughun 1243 Fuslee, she granted a lease at 2,000 rupees per annum to appellants and others (defendants, who have not appealed) for a period extending to 1249, inclusive. A thousand rupees were paid in advance in lieu of security. In 1245, the summary settlement of respondent was cancelled, and another entered into, involving a lengthened period and terms less favorable. Upon this, and with reference to balances of rent due to her by appellants for the preceding years, respondent determined to cancel their lease, which, without any expressed objection on their part, she did; assuming herself, the management and collections of the lands. In 1246 however, appellants recommenced interfering and collecting, and brought actions also against those ryots who had paid rent to respondent; who, again, under the decrees which followed, was obliged to refund the payments made to her. From 1246 to 1249, appellants maintained possession of a moiety of the estate, and never paid a pice of rent. For what was thus withheld, this suit is brought against them.

Appellants pleaded, that respondent had no right to cancel the lease she had granted to them in 1243 Fuslee; that she could not legally act as she had done, under the occurrence of an arrear of rent on their part, without a summary decree to rest her proceed-

ings upon; and that nothing was due for the period for which claims were now preferred by her.

It being satisfactorily established, that appellants had held possession of the lands, without making any payments to respondent, during the years 1247, 1248, and 1249 Fuslee; and that respondent was entitled to the sum of Company's rupees 6763-6-3-8, principal and interest, on account of those years; the said sum was decreed by the lower court; and, on the same grounds, the decree is affirmed; the appeal against it being dismissed, with costs payable by appellants.

THE 15TH SEPTEMBER 1845.

PRESENT:

A. DICK,
JUDGE.

CASE No. 94 OF 1842.

Regular Appeal from the decision of Sumboonath Raee, Principal Sudder Ameen of Zillah Moorshedabad.

RAS MUNEE DIBEEAH, APPELLANT, (DEFENDANT,)

versus

BHAGURUTTEE DIBEEAH, RESPONDENT, (PLAINTIFF,) *
NURSINGH RAE, MOOZAHIM, 3D PARTY.

Pleaders—Bunsee Budun, Ram Pran and Parshun Koomar for Appellant—Ghoolam Sufdur for Respondent—Uzmut-oolla for 3d Party.

Suit laid at Company's rupees 41,884, 15 annas, 12 gundas, 3 cowries, 1 krant, value of real and personal property left by her husband, deceased.

The plaintiff stated that her husband was one of three brothers, who inherited the property in dispute, equally, from their father. That her husband was the eldest, and his name alone was registered in the collectorate as proprietor,—he alone being of age when the father died. That her husband died in 1212 B. Æ., when the names of the other two brothers were registered, and, they being minors, the estates were brought under the court of wards. That she continued in possession, deriving a portion of the profits from the estates. That the youngest brother had deceased, and also his widow, and lastly the second brother, rajah Becjayee Kishun, the defendant's husband, and she now claimed to have her name registered as proprietor of her husband's share, and also to recover

one-third of the personal property left by her husband's father, and his right.

The defendant, Ras Munee, denied plaintiff's claim to any share of the estates, first stating that plaintiff's husband in his last illness, had bequeathed his share to his two brothers, and allotted a pension of twenty-five Sicca rupees to plaintiff. That plaintiff had afterwards written a deed relinquishing all claim to share in consideration of receiving fifty rupees pension. Afterwards defendant produced a written document, denominated a neerband putr; also an extract from accounts furnished to the court of wards, in which appears an item of sixteen rupees paid to plaintiff, in part payment of her pension, as defendant contended; and lastly filed a deed written by her, defendant's husband, called unoomuttee putr, in which was a clause for the payment of fifty rupees monthly to plaintiff: all which evinced plaintiff had never held possession of her husband's share, since his death, in 1212 B. Æ. and now could not be heard from lapse of time.

The case was originally tried by the zillah judge and decided on a deed of amicable adjustment, rufanameh. The property was then under the court of wards, and the surborokar, or manager, and the collector as representative of the court of wards, were made defendants.

The collector appealed to the Sudder Court from that decision, and the Sudder Court [present A. Dick], rejected the deed, rufanameh, because given without the sanction of the collector, and therefore illegal; and returned the case to be retried on its merits; and directed the lower court, especially to enter fully into the averment of plaintiff of continued possession, since her husband's decease.

The principal sudder ameen decided, that although plaintiff had been unable by documentary proof to shew continued possession, she had produced witnesses to testify to her receipt of some of the profits from the estates, and that the defendant had failed to prove that plaintiff's right had been transferred by her husband, or alienated by herself, and that as her right was indubitable, she had not lost it by lapse of time in preferring it, and cited the case of Rancee Bhuvanee, decided in the Sudder Adawlut on the 12th May 1806, as in point. He accordingly decreed her claim to so much of the property as still remained unalienated, and dismissed the claim to the personal property as not proved, and to the property sold, as alienated with her knowledge and permission.

The defendant, Ras Munee, preferred appeal, contending that the principal sudder ameen himself had admitted the plaintiff's inability to prove continued possession, and that therefore her claim was defunct by lapse of time far beyond the law of limitation, and that under construction 942 her receipt of a pension, or of a maintenance, could not entitle her to claim a share. The respondent in answer urged the case cited by the principal sudder ameen as exact-

ly in point, and entitling her to a decree, as no valid proof of alienation of her right had been produced.

JUDGMENT.

The right of plaintiff to inherit the share of her husband's property, is indubitable, and unquestioned save on the score of alienation by her husband, or herself, and her claim to possession equally valid, unless lost under the law of limitation.

The defendant, appellant, has shifted her ground so often, regarding the alienation point, that no credit can be placed in aught she has produced. There are two statements regarding the alienation by plaintiff's husband, the one utterly destructive of the other, and with respect to any alienation by herself, the only evidence, the *ladavee*, or deed of relinquishment, has been given up by appellant herself. On the other hand, the fact of plaintiff having received sixteen rupees from the estate, as apparent from the accounts filed in the court of wards, and the clause in the unoomuttee putr filed by appellant, in which she is desired to pay a monthly allowance of 50 rupees to plaintiff, or if she be not content, to give her share, proves that she used to receive a maintenance from the estate from the appellant's husband who was ostensibly the sole proprietor, and it further proves that he knew she had never alienated or relinquished her right to her share, neither had her husband, his brother. It being then evident, that the plaintiff continued to receive some maintenance on account of her right to her husband's share of the estates, so long as her husband's brother, the husband of appellant lived, that is until 1238, and that she immediately afterwards preferred a claim to be recognized as sharer, the law of limitation does not apply to her claim, and the decision of this Court cited by the principal sudder ameen, is precisely in point. Therefore decreed that the decision of the principal sudder ameen be confirmed and the appeal dismissed with costs.

The 3d party appeared merely to disclaim any right to the property in dispute, for fear of the consequences of champerty.

THE 15TH SEPTEMBER 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 95 OF 1842.

Regular Appeal from the decision of the Principal Sudder Ameen of Moorshedabad, Sumboonath Race.

BHAGURUTTEE DIBEEAH, (PLAINTIFF,) APPELLANT,
versus

RANEE INDUR RANEE, RAS MUNNEE DIBEEAH,
AND THE COLLECTOR, (DEFENDANTS,) RESPONDENTS.

Pleaders—Ghoolam Sufdur and Neel Muneo Banoojeea for Appellant; Bunsee Budun, Purshun Koomar and Ram Pran for Respondents.

APPEAL laid at Company's rupees 8,070-8-9.

This appeal was preferred by appellant, the plaintiff in the former case, No. 94 of 1842, against so much of the principal sudder ameen's decision, as rejected her claim to her husband's share in the estate of Basdeopoor, sold by her husband's brother, the husband of respondent, Ras Munnee, to Ranee Indurranee, respondent, and also that portion of the principal sudder ameen's decision which rejected her claim to her husband's share of personal property. Ranee Indurranee answered, that she had purchased the property bonâ fide, and openly, and had in truth given for it more than its value, in consequence of its propinquity to her own ancestral estates; that the deeds were duly registered; that they were witnessed by the appellant; that the seller was the only registered proprietor; that her name was duly registered in his stead after purchase, and she was put into quiet possession, that therefore the claim now set up by appellant was preposterous and inadmissible.

JUDGMENT.

Although the plaintiff never actually alienated her right to a share in the estate in question, still as she never registered her name as proprietor, requisite under the law, and never interfered or objected to the sole management and possession of the seller, even to the extent of his mortgaging the property as security, and to alienating portions of it permanently, especially the estate in question, which was sold in the most open and public manner for the large sum of 98,000 Sicca rupees, and possession given, and mutations in the Government registers duly made, and she herself proved to have

witnessed the deeds, her right, set forth after such a lengthened silence, cannot, in justice or equity, be for a moment admitted.

With respect to her right to share in the personal property, it is forfeited under the law of limitation, she having preferred no claim to it from the year 1212 B. Æ., or 1805, until the institution of this suit in 1834. Therefore the decision of the principal sudder ameen is confirmed, and the appeal dismissed with costs.

THE 17TH SEPTEMBER 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 225 OF 1842.

Regular Appeal from the decision of the Principal Sudder Ameen of Zillah Mymensingh, Moulvie Julal Oodeen Mohumud.

RAM RAM BUTACHARJ, GUARDIAN OF EESHAN CHUNDUR CHUCKERBUTTEE, MINOR, APPELLANT, (PLAINTIFF,) *versus*

BHYRO CHUNDUR CHOWDREE, RAM KOOMAR CHUKERBUTTEE AND RAM MUNEE DIBEEAH, RESPONDENTS, (DEFENDANTS.)

Pleders—Bunsee Budun for Appellant and Mohumud Huneef for Respondents.

SUIT laid at Company's rupees 7,705, 9 annas, 7 pie.

The plaintiff preferred this suit on account of his ward, whose father and the father of the defendant, Ram Koomar, and of the deceased husband of Ram Munee, were own brothers, and lived together having all things in common. That they lent sums of money on two bonds to the defendant Bhyro Chundur, who not repaying the same, they sued him in two separate cases, in the name of Ram Koomar's father alone, the bonds being in his name—Decrees were obtained, and Bhyro Chundur gave deeds to pay by instalments. The plaintiff now claims right to one half the amount of those decrees.

The defendants, Ram Koomar and Ram Munee, denied the right of plaintiff's ward; declaring the sums were lent by their father alone, and the bonds, and suit, and decree in his name only. In proof thereof they adduced the fact of the plaintiff's ward's father having acted as pleader in those suits for their father, and in the plaints distinctly asserted that the money lent belonged solely to their father.

The plaintiff caused nine witnesses to prove his ward's claim, to be summoned. Only one of them appeared, and the plaintiff refused to state on oath, or solemn affirmation, that they were indispensable. His only other proof were certain papers purporting to be lists of property divided between his ward's father and Ram Koomar and his brother, when they separated, and in which these two loans appeared as conjoint property. These were objected to, as not good and genuine by Ram Koomar.

The principal sudder ameen dismissed the plaintiff's suit, because he had not shewn the testimony of his witnesses to be indispensable, as requisite by law to enable the court to enforce their attendance; and because the papers he produced had already been rejected in another case.

The plaintiff appealed to this Court, urging that he being a Bramin could not make the solemn affirmation required, and that more time should have been allowed him; and secondly, that the principal sudder ameen had erroneously asserted that the papers he filed had been rejected in another case.

JUDGMENT.

On a reference to the record, it appears that the suit was not decided till a year after its institution, and several months after plaintiff's witnesses had been summoned; and till a month and a half had elapsed after plaintiff had been called upon to shew that his witnesses were indispensable. With respect to the papers filed, plaintiff has produced no proof to evince the imputed error of the principal sudder ameen. On the other hand, the plaintiff's ward's father having pleaded in court that the loans were made by defendant's father alone, nothing short of the most decisive evidence to the contrary could thenceforth be admissible. Therefore the decision of the principal sudder ameen is confirmed, and the appeal dismissed with full costs.

THE 18TH SEPTEMBER 1845.

PRESENT :

A. DICK,

JUDGE.

CASE No. 46 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen of Hooghly, Rase Radah Govind.

GOONA MUNEE DIBEEAH AND SUTH BAHIMA DIBEEAH,
WIDOWS OF BHYRO CHUNDUR RAE, APPELLANTS,
(PLAINTIFFS,)

versus

BHUGWUTTEE DASEE, WIDOW OF DOORGA PURSHAD,
AND MOTHER OF DWARKANATH SOOR, ADOPTED SON
OF DOORGA PURSHAD, A MINOR, RAM CHAND NEYO-
GEE, RAJ KISHEN DEY, AND GUNGA DHUR DEY,
RESPONDENTS, (DEFENDANTS.)

*Pleaders—Purshun Koomar, Sheeroo Narain Chuttoojeeah and
Neel Muneo Banoojeeah for Appellants—Gour Huree Banoo-
jeeah and Tarik Chunder Rase for Respondents.*

SUIT laid at Company's rupees 9,240-15-9, amount of loan on
landed security,

The appellants claim the payment of the above sum lent by their husband to the respondent, Bhugwuttee, to enable her to satisfy a demand, against her husband, Doorga Pershad, for which one Sumboo Chunder Dey, father and brother of the respondents, Raj Kishen and Gunga Dhur Dey, had sued her, from the sale of the property left by Doorga Pershad. They state, that Doorga Pershad borrowed a certain sum from Sumboo Chunder on the security of his landed property, which was to be sold for its liquidation, if not paid at the specified period. The debt was due when Doorga Pershad died—Sumboo Chunder sued therefore Bhugwuttee as mother and guardian of the minor Dwarkanath. The suit was settled amicably, on razcenameli, in consequence of appellant's husband advancing the debt due to pay off Sumboo Chunder, and Bhugwuttee wrote him another deed, in which the property left by Doorga Pershad was again given in security. The loan not having been liquidated, the appellants sued Bhugwuttee, and obtained a decree. In execution of it, the property left by Doorga Pershad was put up for sale, when the respondent, Ram Chand, on the part of the minor, objected to its sale, urging the illegality of Bhugwuttee's conduct, who had no authority to alienate or render liable any

property of the minor. Eventually his objection was considered valid, and the zillah judge, in execution, released the minor's property, and desired the decree holders to proceed against their defendant, Bhugwuttee.

In appeal the judge's order was upheld by the Sudder Court. The appellants now sue to reverse those orders; and recover the amount due to them on the decree formerly obtained, from the sale of the minor's property.

The zillah judge founded his order, releasing the property of the minor, principally on the fact of the original deed purporting to have been given by Doorga Pershad, never having been proved, or attempted to be proved in the case of Sumboo Chundur, or of appellants, against Bhugwuttee.

The principal sudder ameen dismissed the claim of appellants on the property of the minor also, chiefly on account of their inability to prove the original deed of Doorga Pershad. And he intimated to the appellants, that they may sue the heirs of Sumboo Chundur.

JUDGMENT.

It appears, that the appellants produced the only two surviving witnesses to the deed of Doorga Pershad, and the principal sudder ameen deemed their evidence insufficient. The appellants had declared that the deed was written by Doorga Pershad himself. The lender of the money, Sumboo Chundur, was a respectable and wealthy merchant and money lender, and therefore his books would be good evidence of the truth of the transaction. There was nothing advanced on the other side indicative of fraud or collusion. The only two points for consideration were, 1st, was the deed, bearing the signature of Doorga Pershad, genuine, and the debt really incurred by him and due? 2ndly, was the deed of the widow of Doorga Pershad, and mother of the minor, adopted son, Dwarkanath Soor, given to liquidate a debt of her husband and to save from sale property of the minor left by Doorga Pershad, and pledged in security for that debt, justifiable and valid?

The first point has not been so fully investigated as it might, and should have been.

With respect to the 2d point, if the deed of Doorga Pershad be proved genuine, and the debt due by him, the liability of the property in question (viz. the property left by Doorga Pershad) under the deed granted by the widow of Doorga Pershad, and mother of the minor, is indubitable.

Therefore ordered, that the case be returned, for the principal sudder ameen to restore it on his file: and retry it, fully investigating the transaction alleged between Sumboo Chundur and Doorga Pershad, calling upon the appellants to produce trustworthy proof to the hand writing of Doorga Pershad, and the respondents, Raj Kishun and Gunga Dhur; to produce the books of Sumboo Chundur.

dur, and any other evidence they may possess to substantiate the truth of the loan, and the deed given by Doorga Pershad; and on the respondent, Ram Chand Neyogee, for any evidence he may have to rebut the above, and evince the fictitious nature of the loan, and the fabrication of the deed.

The zillah judge, in execution of the former decree, having rejected the claim of appellants on the property of Doorga Pershad, mainly on account of its liability not having been entered upon in the decision of the decree, I hold the propriety and legality of this suit to try that point, notwithstanding the construction of the Sudder Courts No. 1129.

THE 18TH SEPTEMBER 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 98 OF 1844.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhugulpore, Mohummud Majid Khan, January 16th, 1844.

BIRJ NURAIN, SON OF DHERIJ SINGH, APPELLANT,
(DEFENDANT,)

versus

RAJAH TEK NURAIN SINGH, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, on the 8th March 1843, to recover from appellant and another (Gowrie Dutt, who appeals separately) Company's rupees 26,534-6-4-16, in virtue of a shura-kutnameh, or deed of partnership, and certain receipts for sums advanced by respondent.

The following is an outline of the case:

Talooqs Puchguchea and Bejulpore, in pergunnah Ooturkhund, were the hereditary property, in equal shares, of Oodwunt Singh and Dherij Singh. The former dispossessed the latter, and took the whole. Upon this, Dherij Singh entered into an agreement with two persons, Jeonath Singh and Bhowanee Singh, to give

them a quarter portion of his half share of the estate, conditionally that they paid the law expenses attending an action for the recovery of it. The action was brought, but failed; and Jeonath and Bhowance declining to furnish further aid, returned the shurakutnameh, under which, had the property been recovered, a quarter share was pledged to them. A proposition was then made to respondent, to subscribe to a similar contract. He assented: a fresh deed, to the same purport as the preceding, was executed; the debt incurred to Jeonath and Bhowance, was discharged; an appeal was preferred to the provincial court against the judgment passed in the zillah, which judgment was reversed; and, finally, a special appeal against this last decision being rejected in the Sudder Court, it became affirmed, and Dherij Singh regained his lands. The judicial proceedings having been thus brought to a successful issue, respondent demanded the fulfilment of the terms specified in the shurakutnameh held by him. This Dherij Singh refused: upon which, respondent entered a suit in the zillah court for the lands promised but withheld from him; and obtained a decree for them from the principal sudder ameen, with an affirmation of the decision in the appeal preferred against it, from the judge. Against this last, the heir of Dherij Singh, now dead, preferred an appeal to the Sudder Court; and there it was determined that the alienation by Dherij Singh of the lands in question, forming as they did a portion of the family estate, hereditarily descended to him, was beyond his competence, and illegal. The judgment, in conformity with this, went against respondent; the decrees of the lower courts were reversed, and the only remedy left to respondent, was to bring an action for the sums advanced by him. This he has done: filing the shurakutnameh explaining the nature of the agreement entered into, and receipts exhibiting the disbursements made upon the faith of it. These receipts are,

1st. One for Sicca rupees 8,053, 'received from Rajah Tek Nurain Singh, a sharer to the extent of two annas of eight annas' share of talooqs Puchguchea and Bejulpore, pergunnah Ooturkhund;' dated 29th Kartick 1234 F.

2d. One for Sicca rupees 1,500, dated 13th Bysack 1234 F.

3rd. One for Sicca rupees 885, dated 21st Bysack 1235 F.

These are all signed by Dherij Singh, and duly witnessed.

4th. One for Sicca rupees 2,000, dated 5th October 1829, (1235 F.,) signed by Gowrie Dutt. The particulars of this will be found under No. 126,—a separate appeal having been preferred in regard to it.

Of the general nature of the transaction, as above set forth, there could not be a doubt. The only point to be determined, was the extent of appellant's responsibility for money actually supplied by respondent to his father; and this, in the opinion of the principal sudder ameen, was limited to the sums acknowledged by the 1st and

2d receipts, bearing date the 29th Kartick and 13th Bysack 1234 F., the two amounting, with interest, to Company's rupees 20,379-11-8. This was decreed accordingly;—the claim for 885 rupees, under the 3d receipt, being rejected, on a doubt in the mind of the principal sudder ameen as to the actual payment by respondent of the sum specified. Against Gowrie Dutt, the other defendant in the suit, a decree was passed for the 2,000 Sicca rupees of the 4th receipt, with interest, amounting together to Company's rupees 4,266-10-8.

Against the decision of the lower court in regard to the 3d and 4th receipts, distinct appeals having been lodged, they will be distinctly noticed. In the matter now under review, the Court, concurring with the principal sudder ameen, do not see any reason to interfere with the decree which has adjudged the amount of the 1st and 2d receipts to respondent. The money was clearly paid and received by the parties respectively, and it is equally evident, that, but for the means thus furnished towards prosecuting their claim, appellant's family, who have so tenaciously and ungratefully denied their obligation, would have lost irretrievably the valuable property which has been recovered and secured to them. The Court dismiss this appeal, with costs.

THE 18TH SEPTEMBER 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 126 OF 1844.

Regular Appeal from a decree passed by the Principal Sudler Ameen of Bhagulpore, Mohummud Majid Khan, January 16th, 1844.

GOWRIE DUTT, APPELLANT, (DEFENDANT,)

versus

RAJAH TEK NURAIN, RESPONDENT, (PLAINTIFF.)

THE transaction which led to this appeal, has been detailed under No. 98. It is only necessary to state here, that the 4th receipt of that number, for 2000 rupees, bearing date the 5th October 1829,

and signed by appellant, was so signed by him as mokhtar, or attorney, employed in the suit then pending between Dherij Singh and Oodwunt Singh. The money is stated in the receipt to have been paid to him by the treasurer of respondent, under instructions from respondent and Dherij Singh, for his professional services in that case; he cannot therefore be considered as individually responsible for the repayment of money so received; whilst respondent has not produced any document (as he has done in connexion with the other three items noted in No. 98) in proof of the disbursement having been made with the assent or even knowledge of Dherij Singh, so that he [Dherij Singh] might be held liable. The payment must therefore be regarded as a voluntary remuneration from respondent for appellant's services in the case in which he had been employed,—in which case respondent was avowedly deeply interested.

Under these circumstances, the Court reverse that portion of the decree of the lower court now appealed against; exonerating appellant from all responsibility in respect to the sum claimed. Costs to be paid by respondent.

THE 18TH SEPTEMBER 1845.

PRESENT :

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 137 OF 1844.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Majid Khan, January 16th, 1844.

RAJAH TEK NURAIN SINGH, APPELLANT, (PLAINTIFF,)

versus

BIRJ NURAIN AND GOWRIE DUTT, RESPONDENTS,
(DEFENDANTS.)

THIS was the third appeal from the decree, the particulars of which have been exhibited under No. 98. It was against the rejection of appellant's claim, by the lower court, to Sicca rupees 885, in consequence of a doubt as to the actual payment by appellant of the sum specified in the receipt. The Court do not find any reasonable

grounds for such doubt. The witnesses do not exactly agree as to the amount acknowledged to have been received; but they unanimously depose to their signatures having been subscribed on the receipt, in attestation of its validity, by desire of the payee, Dherij Singh, and this, under the circumstances generally of the transaction, the Court deem conclusive in favor of appellant.

Reversing the dismissal by the lower court of this portion of the claim preferred by appellant, the Court decree the same against the respondent, Birj Nurain, with interest equal to the principal: all costs to be paid by the said respondent.

THE 20TH SEPTEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 614 OF 1844.

IN the matter of the petition of Lukhee Kaunth and Ram Chunder Fotehdar filed in this Court on the 6th August 1844, praying for the admission of a special appeal from the decision of Mr. J. F. G. Cooke, judge of Dacca, under date the 9th May 1844, altering that of Mr. J. Reilly, principal sudder ameen of Dacca, under date 18th December 1840, in the case of Bulram Fotehdar, plaintiff, *versus* petitioners, defendants. It is hereby certified that the said application is granted on the following grounds.

The plaintiff sued to recover his share of partnership in trade, laying his suit at 5,000 rupees. The principal sudder ameen decreed in favor of the plaintiff 2,185 Sicca rupees with interest, amounting to Company's rupees 4,662-6-4. The judge, after submitting the accounts to a jury, decreed to plaintiff [both parties having appealed] rupees 7,142-3-9-0.

The judge directed the plaintiff to put in a supplementary plaint, and took from him 100 rupees for the additional value of the plaint in the original suit, and also in the appeal. As he, by so doing, has taken upon himself to decide in appeal a suit beyond 5,000 rupees, his act was illegal. The Court therefore admit a special appeal, and, quashing the decision of the judge, direct that he replace the case on his file; and, after returning the supplementary stamps, decide the case between the parties with reference to the original plaint.

THE 24TH SEPTEMBER 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 269 OF 1842.

Special Appeal from a decision passed by the Judge of Shahabad, W. S. Alexander, May 20th 1842; affirming a decree of the Principal Sudder Ameen, Munohur Ali, passed November 16th 1840.

SUMESHUR PANDEE, KUTWAROO PANDEE, SOBNATH CHOBBEE, SUKRAJ CHOBBEE, AND HUNS CHOBBEE,
APPELLANTS, (DEFENDANTS,)

versus

RAJAH GOPAL SURN SING, AND ON HIS DEMISE, RAJAH
OODIT PURKAS SING, HIS SON, RESPONDENT,
(PLAINTIFF.)

THIS suit was instituted by plaintiff on the 28th April 1835, to recover from defendants possession of mouzah Gheoreea, in pergunnah Chounsah; the farmer of the mouzah (Sheoumber) being dead, and he (plaintiff) having a right to what he claims as general proprietor of the pergunnah.

The statement of plaintiff was, to the effect, that his ancestors had been the original proprietors of the whole pergunnah (of Chounsah) from which they were driven by rajah Bulwunt Singh; that in 1189 Fuslee (1782,) they were restored by a sunnud from Mr. Hastings, in favor of his progenitor Bhuggut Sing; that up to the present hour they receive malikānah from the Government; that the village in question was let in farm, to Sheoumber, in 1197 Fuslee; that on his death in 1237 F., he (plaintiff) presented a petition to the collector, to have the settlement made with him, under the provisions of Clause 5, Section 3, Regulation I. 1795; that Sukraj Chobee and others also applied, and the collector without enquiring into his (plaintiff's) rights, made the settlement with them, on the ground of their names being recorded in the Pareena Duffur; that defendants had no documents, but that the collector had pleaded for them that documents could not have been preserved by them through such a length of time; but they assert possession

in 1196 Fuslee, and had they ever possessed any title-deeds, they would have been forthcoming; that the collector states, on the authority of the Pareena records, that defendants were in possession as zemindars from 1182 to 1196 Fuslee; but these records bear no official signature, and are full of erasures and alterations; that the time stated, too, is that of the forcible occupancy of the rajah of Benares, whose grants, if made, are invalid; that the name of Mya Chobee, defendant's ancestor, appears both before and after 1194, in the Pareena papers, without the addition of "zemindar;" that in 1806, (1213 Fuslee) claims urged by Purkasht Pandee and Mohun Chobee were rejected, because they had nothing to produce in proof of a zemindaree right, and no appeal having been preferred, that rejection was final; that Section I, Regulation I. 1795, does not apply to defendant's case, as the collector has applied it, and further, has reference to zemindars dispossessed previously to 1st July 1775, (17th Assar 1182 Fuslee); that the collector admitted that his (plaintiff's) ancestors held the pergunnah of Chounsah, "zemindaree and rājgee,"—why then does he refuse the settlement? that the collector states the zemindaree sunnud of the 11th October 1781, to have been granted solely on the urzee of Bhuggut Singh, who styled himself "the old zemindar of pergunnah Chounsah," but that was the custom of the period, and he possessed papers of an earlier date, granted by competent persons, to prove his right; that the collector states, that had he possessed zemindary rights in virtue of those documents the settlement would have been made with him from the first,—but this is refuted by Section 12, Regulation II. 1795; that the collector urges, that numerous villages have been settled permanently and temporarily, and sales public and private made with others, and that decrees have been passed in the courts in favor of many, without any objection being urged by plaintiff's family,—but it is clear that the settlement of 1197 Fuslee, did not affect proprietary rights, as may be seen by Section 26, Regulation II. 1795, and his (plaintiff's) family were then deprived of their rightful settlement only because the rajah of Benares did not choose to admit them: this was afterwards revoked however; and he now claims to succeed, on the death of the farmer, under Clause 5, Section 3, Regulation I. 1795.

Defendants, in answer to the above, observed, that the plaintiff's claim to a general right to the whole pergunnah, furnished no competency to him to institute a suit for possession of a specific portion of it; that neither he nor his ancestors ever had any such right; if they had, why had they so long abstained from asserting it? many estates in the pergunnah had been permanently settled with others, as proprietors, and are daily being so settled, without any claim being opposed by plaintiff. Under the law of limitation too, his claim is barred. His sunnud does not confer any proprietary right. What he states to have been granted as malikāna, was not so.

Bluggut Singh and Juggut Singh were in attendance on Mr. Hastings, and the grant was for pay, as a jagheer, as may be shewn by the sunnuds of 11th October 1781 and 16th September 1785, and by various papers filed by plaintiff himself. The Parcena Dufter was formed from accounts furnished by the canoongoes, under orders from the Board of Commissioners; and if not attested, its documents are still held in great repute, and are constantly referred to in the courts, collectorates, &c. Originally there were no erasures or alterations: those which now appear, may be ascribed to plaintiff; who falsified the column containing the names of the zemindars, so that defendants were made to appear as gomasths of plaintiff, or as farmers, ryuts, &c. Their names not appearing in the accounts of every year, is of no consequence: it is essential only in the year of settlement. The decrees of the Mirzapoor court filed by plaintiff, are of no service to his cause: they were struck off the file in default on their (defendants') part, which default arose from their subsequent knowledge, that the claim they had made was not tenable during the life time of the farmer. Regulations I. and II. of 1795, were more in their favor, as village-zemindars, than plaintiff's, as shewn by a decree of the Sudder Court which was filed. When the settlements of 1202 Fuslee, were made, by the resident, the village-zemindars were acknowledged in numerous instances; while, if plaintiff's claim were good, he should have had the settlement of every estate in the pergunnah. The accounts referred to by plaintiff, of 1091 and 1112 Fuslee, are altogether unworthy of credit, and there is no saying whence they come. The plaintiff states, that the rajah of Benares (Muheeput Singh) prevented the settlement with him in 1197 and 1202: this is not credible: other pergunnahs were settled for with plaintiff's uncle, because he had purchased them; and hence it appears, that, where there were village-zemindars, their claim to a settlement was paramount.

Plaintiff added in reply, that the question to be determined, was, which of the two, defendants or himself, had the proprietary right in this particular village: he claimed nothing further. The rest was explanatory of documents before noted, or of facts and circumstances which will be found adverted to in the appeal proceedings of the Sudder Court.

The principal sudder ameen was of opinion, that no proprietary right had been established by defendants; inasmuch as no dependence could be placed on the documents which they had produced or referred to, in proof of such right. On the other hand, he deemed the evidence adduced by plaintiff to be conclusive in favor of his claim. As furnishing proof of plaintiff's right, he adverted to a former decree, passed in his own court on the 26th February 1838, disposing of the very question before him, when no such pretensions as those now urged, were advanced by defendants; and cited the

following documents as additional ground for the judgment which he considered the case to call for, viz.

A purwannah of Mr. Hastings, dated 11th October 1781 ;

A proceeding of the Council, dated 11th April 1788 ;

A proceeding of the resident of Benares, dated 27th July 1791 ;
and

A letter of Mr. Jonathan Duncan (the resident) dated 16th February 1788.

These were deemed to shew, that plaintiff's family had originally a proprietary right to the entire pergunnah of Chounsah ; that such right was acknowledged, and possession held under it, till rajah Bulwunt Singh expelled them ; that possession was restored to them in the person of Bhuggut Singh, plaintiff's paternal ancestor ; and that as his descendant, and heir to the property enjoyed by him, plaintiff's title is clear, and must be upheld under Clauses 5 and 6, Section 3, Regulation I. of 1795.

A decree was passed in favor of plaintiff accordingly: and, in appeal to the judge, the same was affirmed, upon the same evidence as had induced the first decision.

A special appeal was then applied for; and admitted by the Sudder Court with reference to a judgment passed in 1803, in the case of rajah Pirtee Put, appellant, versus Sheonath and others, respondents; in which on the 19th October, that year, it was determined that, in claims of this nature, the particular local proprietary right must be established,—the rajright, or that of lord paramount of the pergunnah, being insufficient to uphold a claim to actual possession of the soil.

The Court observe, that plaintiff claims the estate of Gheoreeah, principally with reference to a perwanch granted by Mr. Hastings to his (plaintiff's) ancestor, Bhuggut Singh, in the year 1781, and to certain proceedings of the then Government, which, as he asserts, recognised his claim by awarding to him 'malikana,' which he still receives. He files a decision of the Sudder Dewanny Adawlut of the 6th January 1829, by which the plaintiff in the suit was declared to have the right of settlement in a village in pergunnah Kuntit, under circumstances similar to those of the present case; and another decision of the lower courts, affirmed in the Sudder Court, December 26th 1836, in which the plaintiff obtained a settlement of a village in pergunnah Chounsah, under a deed of gift from rajah Bhuggut Singh, from which he would infer the latter, his ancestor, to have possessed a proprietary right to the whole pergunnah. On examination of this deed, the Court find, that the rajah, styling himself mâlik of pergunnah Chounsah, acknowledges the existence of other village-zemindars in the said pergunnah, to one of whom he makes a grant of a village which had always been in his (the rajah's) possession as a village-zemindar; thereby clearly drawing a distinction between his rights as mâlik of pergunnah Chounsah,

and his rights as village-zemindar of the pergunnah. The purwanah granted to Bhuggut Singh is evidently founded on a representation from Bhuggut Singh, himself, to Mr. Hastings, in which he asserts that pergunnah Chounsah is his hereditary zemindary, from which he has been ousted by rajah Bulwunt Singh. Upon this, Mr. Hastings directs that he be reinstated in the pergunnah. On reference to the proceedings of the Government alluded to by plaintiff, which have been furnished through the Secretary's office at the request of the Court, the Court find, that Bhuggut Singh did not retain his possession beyond a few weeks; the rajah of Benares refusing to recognise him. Mr. Hastings then ordered that a pecuniary compensation should be allowed to him, to the extent of 11,000 rupees per annum; which was duly paid for a certain period. These proceedings subsequently came under the revision of the Government, by whom they were referred to the Home Authorities, as infringing on the rights of the rajah of Benares: a recommendation accompanied the reference, that, adverting to the services of Bhuggut Singh, and in deference to Mr. Hastings, an allowance of 500 rupees per mensem should be paid to the former by Government in lieu of that which, in point of fact, was paid by the rajah; the amount having been debited to him by the resident, with whom rested the control of his affairs.

It has already been ruled by the Court, in a case decided by Messrs. Harington and Colebrooke in 1803 (the case with reference to which this appeal was admitted) that to establish a claim under the law (Regulation I. 1795,) it was incumbent on the claimant to prove his title as village-zemindar of the lands forming the ground of action; all pretensions based merely on the possession of the dignity of lord paramount of the pergunnah, being inadmissible. Another decision however, passed by Messrs. Sealy and Turnbull in 1829, is opposed to the principle laid down in the former. In the present instance, the Court follow the original precedent; deeming it (with reference to Section 12, Regulation II. 1795,) more in conformity with the law, and decidedly more equitable towards those whose rights and interests are dependent on their construction of it.

In the case before them, the respondent (plaintiff) has nothing to adduce beyond his pretensions as lord paramount of the pergunnah of Chounsah: the Court therefore reject his claim, founded on such pretensions, to the village of Gheoreeah, with costs payable by him in the three courts.

THE 26TH SEPTEMBER 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 48 OF 1843.

*Regular Appeal from the decision of Syud Ushruf Hoscin, Second
Principal Sudder Ameen of Tirhoot.*

ALEXANDER NOWELL, (PLAINTIFF,) APPELLANT,

versus

E. J. BECHER AND TUSSUDDOOK HOSEIN, (DEFENDANTS,)
RESPONDENTS.

THIS suit was instituted, for damages to the extent of 5148 rupees, by Mr. D. R. Crawford on the part of Nowell and Co., on the 8th April 1842. The circumstances are as follows:

Plaintiff stated, that for some years past he had had an indigo factory in talook Jhuppah, Tuppah Murwur Khoord. The lands attached to it were cultivated by his own servants; they were for some time let to plaintiff in farm, and even when held by the proprietors were cultivated for his factory. Plaintiff had the land [on which was the indigo crop, the damage of which forms the ground of this action] from 1245 to 1247, in his occupation, under permission from the maliks, and under authority from their surbarakar, Meer Abbas Ali.—In 1248 he prepared the lands and sowed them with indigo, under similar authority. A crop of the first quality was growing on 75 beegahs of the land [being a part of 140 beegahs which had been prepared] as shewn by the evidence of Messrs. G. Taylor, Begg and Cosserat, and other witnesses on the spot. This crop, he urged, defendants could not interfere with, nor were they justified in destroying it; if in collusion with the maliks and their surbarakar, defendants subsequently procured a pottah, after the lands were sowed with indigo, they were only entitled to receive ground rent. In consequence, however, of the obstructive measures they adopted, the crop was lost. The 75 beegahs would have produced, 18 maunds and 30 seers of manufactured indigo, which, at 200 rupees per maund, would yield 3750 rupees. The seed produced 150 maunds, would have been worth 1200 rupees, at 8 rupees per maund, making a sum of 4950 rupees principal, which with interest from the 1st December 1841 to end of March 1842, being 198 rupees, amounts altogether to 5148 rupees, for which the action was brought.

Mr. Becher, defendant, in answer, stated, that the plaint did not set forth the boundaries of the land, nor the village in which it is situated; that plaintiff had no permission from the maliks to sow the land, and that the surbarakar, Abbas Ali, had no authority to grant plaintiff permission to sow them; that Tussuddook Hosein and the other proprietors gave him a farm of the villages Jhuppah Dehee and Jhuppah Oodhuni from 1248 to 1252 Feslee, of which he got possession at the commencement of the year and planted sugar cane; that in consequence of a paucity of fields, the entire talook of Jhuppah, which the maliks held in their own possession, was afterwards given in farm to him on advance of 11000 rupees, at a jumma of 9000 rupees per annum; that he had a large supply of canes on hand, and on his informing the maliks of this, they desired their amlah to have them planted by the ryots, and the plantation accordingly commenced; that the proprietor of the Bhikempore factory [plaintiff] was desirous of securing the farm of the talook; but the maliks objected to give it to him, upon which he sent a number of ploughs upon the land which had been prepared for sugar cane, and by night sowed them with indigo, notwithstanding defendants' people protested against it; that a quantity of cane not being planted, was thus destroyed; that defendant applied to the foydaree court, as did plaintiff, and proceedings were held by the magistrate under Act IV. of 1840, who, on the 15th April 1841, upheld defendants' possession; that this order was confirmed in appeal to the session judge on the 19th idem; that on the 9th June following the magistrate directed defendant to sue for damages, in pursuance of which he brought an action against, Nowell and Crawford his attorney, for 14,000 rupees, value of molasses which would have been produced on the 140 beegahs disputed; and it is alleged that this suit has in consequence been instituted.

Defendant further urged that he did not either cut the indigo crop or destroy it, and that had he interfered with it, as plaintiff states, the latter would undoubtedly have complained at the time to the police and in his plaint have specifically mentioned the date.

At this stage of the proceedings, the Court found it necessary to call for the records of two cases between the same parties, both of them bearing on the merits of that before them, numbered respectively 22384, 'Becher *versus* Nowell, for 14,000 rupees damages,' and 389, 'Nowell *versus* Becher, for reversal of the order passed by the magistrate on the 15th April 1841.' These two cases were, simultaneously with that in appeal before the Court, disposed of by the second principal sudder ameen on the 28th November 1842. The action for damages, it appears, was dismissed, and defendant was ordered to pay the plaintiff two rupees per beegah as ground rent. The suit for reversal of the magistrate's order, was decreed in plaintiff's favor. Mr. Becher appealed the first mentioned case to this Court, and it was struck off on default, under Act XXIX. of 1841. No appeal was preferred in the second case.

The Court having resumed the hearing of this case on the 4th August last, objection was taken by Mr. Becher's vakeel to the institution of any case by Crawford as mokhtear for Nowell and Co. After a consideration of the arguments on both sides, it was determined—with reference to the Court's Construction No. 75, to the action brought by Becher *versus* Crawford as attorney for Nowell and Co., with advertence to the original answer, filed by Becher in this case, wherein he nowhere denies Crawford's competency to act for Nowell and Co. and to Crawford's incompetency not having been pleaded in answer in the lower court, by which such plea was inadmissible in appeal,—that this suit must be proceeded with; and Crawford was accordingly duly recognised on the part of the plaintiff, appellant.

Plaintiff, in his reply, urged, that his indigo crop which had previously been sown, was not cut by them, in consequence of measures adopted by the defendant, Becher, viz. his application to the magistrate and the orders which were issued by that officer in his roobukaree of the 15th April 1841, the result of which was, that he, plaintiff, dared not approach the disputed lands. Damages on the above ground, he urged, were chargeable to defendants. As to the absence of any boundaries to the disputed land, he pleaded that Becher in his case No. 22384 against him, Nowell, before the second principal sudder ameen, had not defined their limits, and that in an action for damages no demarkation of boundary was necessary.

The defendant, Tussuddook Hosein, after the above reply had been filed, appeared in Court on the 17th September 1842, and pleaded, that plaintiff's engagements for the lands were closed, and he had no authority to cultivate them after the period of his pottah had expired, without fresh agreement. Abbas Ali, he urged, was not empowered to write the letter he addressed to plaintiff. Moreover, it was conditional and dependent on the sanction of the malik, viz., defendant, and lastly, he stated that he did not give plaintiff any document, nor did he destroy the crop.

Plaintiff, in reply to the above answer, stated that the ground was sown by this defendant's permission and that of his surbarakar; that the indigo crop was on the ground, when the two defendants afterwards got up the story of the farm; and that a crop already on the ground could not in such case be destroyed; that the allegation that the surbarakar had no authority, is false, for all his acts are at the present moment sanctioned by the defendant, and it was under the surbarakar's letter and permission that he, plaintiff, grew indigo on the land up to 1247, which defendant himself acknowledges in this suit; that Abbas Ali being surbarakar in 1248, his act cannot be impugned by the defendant.

Defendant, Mr. Becher, in his rejoinder, again urged that no time or date is given in the plaint as required by Section 3, Regulation IV. 1793. He quoted the proceedings of the magistrate and the session judge in his favor, denied indigo was sown before he,

defendant, obtained a pottah; alleged he sent a copy of the lease to Mr. Champion, former mokhtear of the plaintiff, who nevertheless sowed the indigo, and acknowledged he was aware of the farm before he did so.

It has already been stated that the second principal sudder ameen disposed of three cases between the parties before the court, on the same day, the 28th November 1842. As his judgment is detailed in the case No. 22384 '*Becher versus* Crawford as attorney for Nowell and Co.,' the Court direct that his proceedings in that case be read.

'It is recorded, that the talook of Jhuppah is the property of Tus-suddook Hoscin and others. All parties agree that the defendant held the 140 beegahs up to 1247, and sowed indigo on them. They also agree that the plaintiff got a farm of the said talook from 1248. The only dispute is, whether defendant cultivated the lands for indigo in 1248, before or after the farm was given to plaintiff. The maliks admit that Abbas Ali was their surbarakar in 1248, and as he acknowledges he gave defendant permission to sow indigo before plaintiff got his farm, though he states it was conditional, yet, as the surbarakar had authority to make settlements with the ryots, and this the maliks do not deny, and as defendant has produced numerous proofs of the surbarakar's authority to make settlements in the mofussil, it would be unjust to deprive the defendant of the crops on the land which he had cultivated. A farmer is not entitled to upset engagements made with another, by the malik, previously. Evidence of Ruzzuk Lal Putwaree and others shews that defendant, without objections from any quarter, sowed the land in Phalagoon 1248; and of course it was previously prepared for the sowings. Plaintiff states that the "annul dustuck," authority to enter, was written at Patna on the 24th January 1841, or 17th Maugh 1248. The paper on which it is engrossed, was sold at Mozufferpore, on the day previously; no reason is assigned for the malik executing a document at Patna on paper thus sold at Mozufferpore, nor is it stated why plaintiff advanced 11,000 rupees without obtaining a pottah. There can be no doubt that the plaintiff, who is at enmity with the defendant, in collusion with the malik, procured the document dated the 24th January, as above, after the defendant had cultivated the land for indigo. Under the above circumstances, plaintiff is only entitled to receive two rupees per beegah from defendant, which was the sum paid to the maliks. Plaintiff's claim to damages is groundless.

It is not proved that defendant's indigo crop was destroyed by the plaintiff, or in consequence of his obstruction. The suit for damages of indigo, was instituted after this action, through enmity, I therefore dismiss it.

As to defendants' suit for reversal of the foudjdarce proceedings under Act IV. by which he was ousted from the 140 beegahs on the ground of his having sowed indigo on them after he was informed

of plaintiff having taken a farm of them, under the circumstances already set forth above, those proceedings must be annulled.

Ordered that plaintiff receive from defendant two rupees per beegah on the 140 beegahs, with proportionate costs and interest on the amount decreed to date of realization. This order must not be considered to affect plaintiff's rights to the farm "

The Court now read the principal sudder ameen's decision against which the present appeal is preferred, as follows:

" Case No. 22384, between the same parties who were the litigants in this, being before the Court, the two must be simultaneously disposed of. The grounds of both decisions are recorded in the first mentioned case. As it is not shewn that the indigo was destroyed by the defendant, the plaint is dismissed. The list of witnesses now put in by the plaintiff's vakeel was not required. Let it be filed with the record, costs made chargeable to plaintiff."

The Court, after mature deliberation, are of opinion that the decision of the principal sudder ameen in this suit must be reversed, for the following reasons: They hold, that the proceedings of the magistrate, dated the 15th April, 1841, confirmed by the session judge, which award possession to the respondent, with authority to root up the indigo crop, then growing, and direct the police to apprehend any of the appellant's people who may interfere with the execution of the orders issued, are ample proof that plaintiff (appellant) sustained the loss of his indigo crop by the acts of the respondents and the obstructions they opposed to him. It is evident that the appellant could not, without contravening the magistrate's orders and exposing himself to the penalties of Section 7, Act IV. of 1840, approach, much less cultivate or cut the indigo which he had planted; and they are of opinion that he took the legal course when he refrained from further interference, and adopted measures to assert his rights in the civil court. The principal sudder ameen seems to have lost sight altogether of this fact, and of the nature of the proof requisite to sustain this action, and to have rested his judgment entirely on the circumstance that the defendants did not actually cause the crop to be cut and carried away. In this respect the Court consider the principal sudder ameen's decision faulty; and therefore so far reverse it. The grounds on which he has come to the conclusion that the plaintiff (appellant) was entitled to cut the indigo he had sown, they hold to be good; and as the respondent has no where pleaded in abatement of damages, they award the amount claimed against Mr. Becher conjointly with Tussuddook Hosein the malik, who, it is clear, acted in collusion with him, to deprive appellant of the crop he was entitled to reap, under the agreements entered into with his acknowledged manager in the moffussil, Meer Abbas Ali.

ORDERED,

That a decree pass for the appellant accordingly with costs.

THE 3D NOVEMBER 1845.

PRESENT:

W. B. JACKSON,

OFFICIATING TEMPORARY JUDGE.

CASE No. 276 OF 1844.

*Regular Appeal from the decision of the Principal Sudder Ameen of
Rajshahye.*

KISHIENMUNEE DEBBEA AND TARAMUNEE DEBBEA,
APPELLANTS, (DEFENDANTS,)

versus

BABOO DOARKANATH THAKOOR, RESPONDENT,
(PLAINTIFF.)

Pleders—Rajnarain Dutt and Prossunocomar Thakoor.

THE plaintiff claimed possession of muhal Bheiroburee, &c., in his estate of Shalizadpore, with mesne proceeds, and to reverse the putnee lease of that muhal held by defendants.

The defendants denied the liability of their lease to be set aside by the plaintiff as auction purchaser.

The principal sudder ameen, on the 5th September 1843, gave a decree in favor of the plaintiff, awarding him possession of the land, with mesne proceeds, and setting aside the lease.

The defendants appeal to this Court on the following grounds.

That the plaintiff was not the purchaser at a revenue sale; but had bought the estate from his agent, who bid for and purchased it at a revenue sale in his own name.

That the putnee lease was given by the former zemindar; and though several transfers of the parent estate had subsequently taken place, the putneedars had not been molested.

That this lease comes within the exceptions laid down in Sections 32 and 33, Regulation XI. 1822, and is not voidable by a purchaser at a revenue sale.

That the lease was given during the progress of the decennial settlement, and is, on that account, not voidable.

JUDGMENT.

Although the plaintiff is not actually the purchaser at a revenue sale, he has acquired the rights of that purchaser, by subsequent purchase, and has been declared by this Court, on 27th July 1836, to be vested with those rights. The omission of former proprietors to enforce their rights against the defendants, does not affect the

right of the present owner to oust them. There is nothing in the putnee lease, which is filed, to bring the tenure within the exceptions laid down in Sections 32 and 33, Regulation XI. 1822. It is an ordinary putnee lease from a former zemindar, Rajah Ramkishan. The lease is dated 1201; and as the decennial settlement of the estate is admitted by both parties to have extended from 1199 to 1208, it was evidently given after the decennial settlement came into operation. The holders of it, for the above reasons, were liable to be ousted by a purchaser at a revenue sale. The principal sudder ameen's decision is, therefore, hereby affirmed.

THE 5TH NOVEMBER 1845.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 121 OF 1841. *

*Regular Appeal from a decree passed by the Principal Sudder
Ameen of Behar, Niamut Ali Khan, August 3d 1839.*

MOOST. KULSOOM KHANUM, APPELLANT, (PLAINTIFF,)

versus

MIRZA KURBAN ALI, MOOST. MOHUMMUDEE KHANUM, MOOST. OMDEH KHANUM, AND MOOST. RUJ-BEE KHANUM, RESPONDENTS, (DEFENDANTS.)

THE appellant in this case is the mother of the two first named respondents, and step mother of the other two; and, besides these, are oozrdars,—a third party, laying claim to the property involved in the suit; viz. Baboo Bhowun Singh and Ramnath Pathuk.

THE suit was instituted by appellant, on the 1st March 1838, to recover from respondents the sum of Sicca rupees 1,36,720; being the amount of appellant's marriage dower, settled upon her by her husband, Gholam Hosein, in 1205 Hijree (1791); respondents, as heirs in possession of her husband's estate, being responsible for the payment of the same.

THE respondent, Kurban Ali, acknowledges the claim, as set forth; Moost. Mohummudee does not appear; and Moost. Omdeh and Moost. Rujbee admit a settlement to have been made; but limit it to five hundred dirms (Sicca rupees 166-11,) which they assert was paid by Gholam Hosein before his death in 1829.

THE oozrdars, or third party, claiming, are creditors of Kurban Ali; holding the landed estate in mortgage from him, and decrees

of court against him for their debt, to evade payment of which, they maintain, the present suit was instituted; the family conspiring to defraud them at the instigation of Kurban Ali.

The principal sudder ameen, deeming the asserted settlement by Gholam Hosein upon appellant to be proved, decreed the full amount of suit against Kurban Ali, Moost. Omdeh, and Moost. Rujbee, agreeably to their respective acknowledgments; but decided, at the same time, that the debt due to the oozrdars, Bhowun and Ramnath, should be first satisfied from the lands; any surplus proceeds from the sale of which might be carried towards the satisfaction of the decree.

Against this, appellant lodged the appeal now before the Court. This, in the first instance, was laid before the late Mr. James Shaw; who determined, that the *den muhr* [or marriage dower] of appellant, was legally claimable by her, and should have precedence of the decrees against her son, Kurban Ali, held by the oozrdars; but that Moost. Mohummudee should be exempted from all responsibility in regard to it.

The proceedings were next submitted to Mr. Barlow; who, viewing the transaction as unsupported by sufficient evidence in its main points, and cognizance of the claim barred by the lapse of time since the cause of action arose, would have reversed the decree altogether; thereby leaving the oozrdars in statu quo, or as they stood before the institution of the suit in the court of the zillah.

The two preceding Judges differing, as shewn, the case was brought before a third, Mr. Reid; who, after going through it, and calling for further evidence, particularly respecting a certain by-mukaseh (or sale in substitution,) filed by appellant as executed by her husband in 1795, by which he transferred to her certain of the lands now contested, in lieu of a portion of her dower—was of opinion, that the decree appealed against was an equitable judgment, and proposed an unmodified affirmation of it.

A fourth voice thus becoming necessary, another Judge of the Court had the case placed on his file; but, finding it impossible to take it up within a reasonable time, it was transferred, and came on for disposal as now shewn.

The *den muhr* of appellant is proved and acknowledged by the principal respondent, Kurban Ali, to the full amount set forth, and, according to usage, should be satisfied in preference to other claims of whatever nature; but, it being in evidence, that, on the death of Gholam Hosein, the husband of appellant, and father of Kurban Ali, the latter (Kurban Ali) was acknowledged by appellant as sole heir to his deceased father's estate, without any reservation on account of her dower, and that she signed the *wurasutnameh* (or acknowledgment of heirship,) under which possession was obtained by him, Kurban Ali, who, by such possession, was enabled to borrow money on pledge of the lands thus held by him, I deem it consonant

both with law and equity, that the creditors holding this pledge should be considered to have a prior claim to that advanced by appellant. Concurring therefore with Mr. Reid, I affirm the decree of the principal sudder ameen, with costs payable by appellant.

With reference to Mr. Shaw's opinion regarding Moost. Mohumudee Khanum, it is proper to observe that, under the specific award against the other respondents, by name respectively, no portion of the decree remains for which she might be deemed responsible.

THE 6TH NOVEMBER 1845.

PRESENT :

J. F. M. REID,

JUDGE.

CASE No. 288 OF 1841.

RAJA BISHENNATH SINGH AND RANEE INDUR
MUNEE DIBEA, WIDOW OF RAJA JUGURNATH
SINGH, APPELLANTS,

versus

SOORUJ NURAYN CHOWDRY, BHOLANATH CHOW-
DRY, BIRJNATH CHOWDRY, GOPEE NATH CHOW-
DRY, JUGURNATH CHOWDRY, AND THE WIDOWS OF
PRANNATH CHOWDRY AND BISHEN NATH CHOW-
DRY, RESPONDENTS.

THIS is a regular appeal from the decision of the principal sudder ameen of zillah Mymensingh, instituted by the appellants and Rane Hur Soondoree, widow of Raja Gopeenath Singh, the zumeendars of 14 annas of pergunnah Soosung, on the 1st July 1839, to fix the rent to be paid by the respondents on a dependant

talook, held by them at a variable rent, comprising the mouzahs noted in the margin.*

- *1. Mouzah Pooree with Jote Gunga Ram.
- 2. Mouzah Punjwaee.
- 3. Mouzah Baklee Kanda.
- 4. Mouzah Buhore Kona.
- 5. Mouzah Pauch Kuhaonea.
- 6. Mouzah Hureena Kanda.
- 7. Kismut Khalee Shadkona.

The plaintiffs stated that Rughoonath Chowdry, Gunga Ram Chowdry, Kishen Kishwur Chowdry and Sooruj Nurayn Chowdry, who were servants of the zumeen-

dary, managed to get the mouzahs in question into their possession as *zimmeedars*. On the death of Rughoonath, Kishen Kishwur Chowdry held the three first named mouzahs, on the plea of a pottah in the name of Rughoonath, paying according to the pergunnah

rates, 1132 rupees, 14 annas, 14 gundas. From 1194 to 1197 pergunatee, he paid rent at diminished rates, in consequence of falling off of the cultivation; and from the latter year till 1205 pergunatee, he paid at higher rates. In 1216 pergunatee quarrels arising among the defendants, the heirs of the Chowdries aforementioned, they fell in balance; and, on the 22d Assar 1216 pergunatee, Sooruj Nurayn executed a deed called a *tahood kistbundee* in the name of Kishen Kishwur Chowdry, agreeing to pay by instalments the sum of 1132 rupees, 14 annas, 14 gundas, per annum for the years 1216 to 1223 pergunatee, both inclusive. The defendants paid their rents up to 1238 pergunatee; and, on their ceasing to do so in 1239, the plaintiffs, after calling on them in the usual manner to take a pottah and give in a kubooleut, brought this suit [laying the amount at 15000 rupees,] to compel the defendants to pay an annual rent of 2000 rupees.

The defendants [with the exception of the females, who did not appear,] resisted the claim. They asserted that the mouzahs in question had been granted to their ancestor Kishen Kishwur Chowdry, long before the decennial settlement, by Raja Kishore Sing, ancestor of the plaintiffs, who, after a measurement of the lands, granted a pottah on the 2d Assar 1177 pergunatee, or 1176 Bengalee, fixing the rent in perpetuity at Sicca rupees 504; that the talook was separable from the zumcendaree, and that they, in the capacity of talookdars, had granted portions of land, rent-free, for religious purposes, which grants had been upheld by the special deputy collector under regulation III. 1828; that they, being anxious at the time of the decennial settlement to apply for a separation of their talook from the zumcendaree, Raja Raj Singh, another ancestor of the plaintiffs, by a letter, under his seal, dated 25th Chyt 1199 pergunatee, or 1197 Bengalee, confirmed the talook at the former rent, and induced them to refrain from demanding a separation. They denied in toto the *tahood kistbundee* of Sooruj Nurayn, and pleaded other confirmatory letters written by the same Raja Raj Singh.

The suit having been referred to the principal sudder ameen, Moolvee Jelaloodeen Mahomed, he, on the 28th August 1841, for the reasons detailed in his decision, dismissed the claim of the plaintiffs with costs.

This appeal was brought by Raja Bishennath Singh and Ranee Inder Mune. On the death of the latter, the usual notice for the appearance of heirs was issued. One Ram Churn Mujmoodar appeared before the zillah court as guardian of Sri Kishen Singh, minor, adopted son of the Ranee; but did not appear before this Court. Sooruj Nurayn, the respondent, having demised, Ram Mohun Chowdry and Goluc Mune Dibe appeared before the zillah court as his son and son's widow. They did not however appear before this Court.

I see no reason to interfere with the decision of the principal sudder ameen, which rejects the claim of the plaintiffs [appellants,] to re-assess the talook of the defendants [respondents.] Though the *onus* of proving a right to hold land at a fixed rent lies on the dependant talookdar, it must be borne in mind that, in every case in which the rent has been variable, and the right to hold at a fixed rent usurped, it will be easy for the zameendar, by the production of his zameendarce papers, to prove the payment of rent at variable rates. In the present instance the plaintiffs have not attempted to do this. They have merely produced the *tahood kistbundee* of the 22d Assar 1216 pergunatee before alluded to, and an extract from the quinquennial register of 1202 B. S. In both of these documents, the villages enumerated in the margin of the plaint, are entered with the rents assessed on each: the accounts slightly differ, as relates to the rent of each village; but they agree in the main, amounting in the first to 1132 rupees, 14 annas, 14 gundas; and, in the second, to the same sum omitting the gundas. The *tahood kistbundee* is sworn to by two surviving attesting witnesses. The defendants file the sunnud of Raja Raj Kishen Sing of 1176 B. S., and four *khuts* or letters from Raja Raj Singh sealed with their respective seals and bearing in lieu of signature the words "Sree Suhee," written, two, in the year 1199 pergunatee, and two in the years 1220 and 1225 pergunatee, confirming the talook and recognizing the fixed rent.

I concur with the principal sudder ameen in rejecting the *tahood kistbundee*. It is executed by one, and, apparently, the youngest, of the several sharers, in the name of the person whose name was recorded, and should be rejected on this account; for, though one partner may be allowed to sign for the others, under certain circumstances, this privilege must be restricted to cases of necessity, not to extend to a case in which, the signatures of the other sharers being procurable without difficulty, one takes upon himself to bind the others to pay for so long a period as eight years a large amount of rent. The evidence adduced is not in my opinion sufficient to establish this deed. On the contrary, I consider the sunnud, and the four confirmatory *khuts*, or letters, proved by the evidence of defendants' witnesses, who had good opportunities of knowing the seals of the zameendars. That the defendants have invariably exercised the right of talookdars is proved by the evidence of the witnesses, and certain documentary evidence, which shews that grants made by them, rent-free, for religious purposes, have been upheld by the special deputy collector. The extract from the quinquennial register, shewing that the rent in 1202 was asserted to be 1132 Rupees, 14 annas, cannot, unsupported, stand against the defendants' evidence.

I therefore confirm the decision of the principal sudder ameen, and dismiss the appeal with costs.

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 295 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 3d of June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date the 13th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bhoobun Koormee and others, defendants.

It is hereby certified that the said application is granted on the following grounds :

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bhoobun Koormee, the defendant, on 3 beegahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received 7 rupees in advance from him. In 1248 the first crop had been cut and carried away to plaintiff's factory, the stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaeree court : at length plaintiff entered an action against the defendants in the moonsiff's court, for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bhoobun Koormee, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malick or farmer, for the lands in question. The moonsiff decreed the sum of 12 rupees, 8 annas penalty, under the provisions of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

The judge of Tirhoot affirmed the judgment of the moonsiff ; and a special appeal was preferred in this, and eighty-three similar cases, to this Court.

OPINION.

It was urged that Mr. Crawford held no authority from Nowell and Co. to institute the suits above referred to, and that no decree

consequently could pass in favor of the plaintiff. This objection, urged in a regular appeal, No. 48 of 1843, between the same parties, was over-ruled by Messrs. Rattray, Tucker, and Barlow, on the 4th August 1845, on the ground that the defendant, Becher, had already sued Crawford as attorney of Nowell and Co., for 14,000 rupees damages of sugar cane, in the zillah court, where he had obtained a decree, thus acknowledging the powers of Crawford to act on the part of Nowell and Co. On a reference to the records of the above appeal case, disposed of on the 26th September last, we find that Becher, in his answer, distinctly pleads that the plaintiff's action, for rupees 5,148 damages of indigo, is brought as a set off against the suit which he, Becher, had instituted against Nowell and Co., and Crawford their attorney, for 14,000 rupees damages of sugar cane. Adverting to this specific recognition by Becher of Crawford's powers to act for Nowell and Co., and also to the Court's Construction No. 75 of the 31st January 1811, and to the Court's proceedings of the 4th August last, the Court adhere to the opinion then expressed as to the competency of Crawford, and reject this ground for admission of special appeal. They also throw out several other pleas for admission, urged on the back of the petition, as inapplicable, and proceed to consider the plea brought forward by the petitioner that the decisions of the lower courts in this case, and the other 83 pending, are contrary to law.

The Court observe that the moonsiff's decision is grounded on a regulation, [Section 5, Regulation VI. of 1823,] repealed by Act X. of 1836, and the zillah judge, in his proceedings of the 29th February, has upheld the decision of his subordinate court founded on the repealed law. An appeal is admitted on this special point; and the Court order that this, and the other 83 cases pending on the special appeal file, which are also admitted, and in all of which similar orders have been passed by the lower courts, be placed on the file of this Court, and then returned to the moonsiff for re-investigation as to the amount of damages awardable under Act X. of 1836, after due consideration of the pleas of both parties on that question only.

FURTHER ORDERED:

That a copy of this proceeding be appended to the record of each of the eighty-three cases above referred to.

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 314 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court, on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Munnee Thakoor, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Munnee Thakoor, the defendant, on one biggah of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Munnee Thakoor, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provisions of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 315 OF 1844.

In the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirlhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Gheedhoo Dhobee, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Gheedhoo Dhobee, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Gheedhoo Dhobee, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 7 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 316 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Dursun Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Dursun Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Dursun Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 317 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirthoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 13th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Ramdyall, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Ramdyall, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Ramdyall, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 318 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the Moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Summunbode Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Summunbode Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court; at length the plaintiff entered an action against the defendants in the moonsiff's court for 50 Rs. damages. The defendant, Mr. Becher, pleaded that his co-defendant, Summunbode Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 319 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bustee Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bustee Goalla, the defendant, on ten cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdar's court : at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bustee Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in *Petition No. 295*, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 320 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Toofannee Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Toofannee Goalla, the defendant, on 1 *hygga* of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 *Fuslee*, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the *fouzdaree* court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Toofannee Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no *pottah* from either *malik* or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 321 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Boodhun Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Boodhun Goalla, the defendant, on 15 cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaress court: at length plaintiff entered an action against the defendants in the moonsiff's court for 27 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Boodhun Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 9 rupees 6 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 322 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozuffierpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Assah Chammar, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Assah Chammar, the defendant, on certain lands, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Assah Chammar, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 323 of 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Sree J'hingar, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Sree J'hingar, the defendant, on 5 cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court : at length plaintiff entered an action against the defendants in the moonsiff's court for 12 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Sree J'hingar, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 3 rupees 2 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 324 OF 1844.

IN the matter of the petition of Mr. J. E. Beecher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Soomrun Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Soomrun Goalla, the defendant, on ten cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Beecher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Beecher, pleaded that his co-defendant, Soomrun Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 325 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner Bhucho Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bhucho Koyree, the defendant, on fifteen cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 37 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bhucho Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 9 rupees 6 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 326 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Ramdhun Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Ramdhun Goalla, the defendant, on 15 cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 37 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Ramdhun Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 9 rupees 6 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 327 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Sheik Mohomud Allee, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Sheik Mohomud Allee, the defendant, on 10 cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Sheik Mohomud Allee, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 328 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Roopun Pasban, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Roopun Pasban, defendant, on 10 cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Roopun Pasban, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 329 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Pullit Hajam, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Pullit Hajam, the defendant, on ten cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Pullit Hajam, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 330 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Rugghoonath Goalla, &c. defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Rugghoonath Goalla, the defendant, on 10 cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Rugghoonath Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 331 OF 1844.

In the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Khudderun Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Khudderun Goalla, the defendant, on five cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 12 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Khudderun Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 3 rupees 2 annas penalty, under the provisions of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARIOW,

TEMPORARY JUDGE.

NO. 332 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Jankee Chammar, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Jankee Chammar, the defendant, on 10 cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Jankee Chammar, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in *Petition No. 295, page 322.*)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 333 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Sheik Ulphoo, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Sheik Ulphoo, the defendant, on 5 cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 12 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Sheik Ulphoo, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 3-rupees 2 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER, 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 334 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirthoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Sheik Nyim, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Sheik Nyim, the defendant, on one bigga, ten cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut, and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 75 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Sheik Nyim, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 18 rupees 12 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 335 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Jeoolall, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Jeoolall, the defendant, on 1 bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Jeoolall, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 336 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Sheoonath Jha, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Sheoonath Jha, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Sheoonath Jha, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 337 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bustee Goalla, &c. defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bustee Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the foudjaree court: at length plaintiff entered an action against the defendants, in the moonsiff's court, for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bustee Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW.

TEMPORARY JUDGE.

PETITION NO. 338 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirkoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Buxshee Jolaha, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Buxshee Jolaha, the defendant, on one bigga, five cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdar court: at length plaintiff entered an action against the defendants in the moonsiff's court for 62 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Buxshee Jolaha, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 15 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1844.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 339 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 8th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Chuttoo Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Chuttoo Goalla, the defendant, on five cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 12 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Chuttoo Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 3 rupees 2 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 351 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bhattoo Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bhattoo Koyree, the defendant, on three biggas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the foudaree court: at length plaintiff entered an action against the defendants, in the moonsiff's court, for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bhattoo Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 352 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozuffierpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bhyro Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bhyro Goalla, the defendant, on fifteen cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants, in the moonsiff's court, for 37 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bhyro Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 9 rupees 6 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 353 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Moznufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Purshun Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Purshun Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Purshun Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 354 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Byjnath Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Byjnath Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Byjnath Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 355 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Fuqueerah Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Fuqueerah Koyree, the defendant, on ten cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Fuqueerah Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 356 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1813, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Pershaud Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Pershaud Goalla, the defendant, on ten cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaress court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Pershaud Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 357 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 13th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Durshun Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Durshun Koyree, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaeree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Durshun Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 358 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, and Sheik Must Allee, defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Sheik Must Allee, the defendant, on five cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the foudzaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 12 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Sheik Must Allee, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 3 rupees 2 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 359 OF 1844.

In the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bhubooklal Thakoor, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bhubooklal Thakoor, the defendant, on ten cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bhubooklal Thakoor, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 360 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Puncha Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Puncha Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Puncha Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 361 OF 1845.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Shumbhoo Roy, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Shumbhoo Roy, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Shumbhoo Roy, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 362 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Kooar Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Kooar Koyree, the defendant, on ten cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becker, pleaded that his co-defendant, Kooar Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 363 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Neela Kandoo, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Neela Kandoo, the defendant, on ten cottahs of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Neela Kandoo, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 364 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, and Buktawur Pasban, defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Buktawur Pasban, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendant in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Buktawur Pasban, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 365 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Munoohur Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Munoohur Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Munoohur Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 366 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Humoon Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Humoon Goalla, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Humoon Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 367 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Jogee Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Jogee Koyree, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Jogee Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 368 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 13th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Hoorul Rowshungur, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Hoorul Rowshungur, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Hoorul Rowshungur, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 369 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozuffierpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bheek Jolaha, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bheek Jolaha, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the foudardar court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bheek Jolaha, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 370 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Phoolchund Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Phoolchund Goalla, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Phoolchund Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 371 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Hulahul Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Hulahul Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Hulahul Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 372 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 13th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Fuqueerah Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Fuqueerah Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Fuqueerah Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the land in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES;

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 373 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Shumbhoo Dey Goalla, &c, defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Shumbhoo Dey Goalla, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Shumbhoo Dey Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 374 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Moosun Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Moosun Goalla, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Moosun Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 375 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Chuttoo Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds,

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Chuttoo Goalla, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249 when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Chuttoo Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 376 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Chukree Jolaha, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Chukree Jolaha, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Chukree Jolaha, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 377 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bhoolal Thakoor, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bhoolal Thakoor, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdar court: at length plaintiff entered an action against the defendants in the moonsiff's court, for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bhoolal Thakoor, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provisions of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 378 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Deepchund Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Deepchund Goalla, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Deepchund Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provisions of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 379 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bhoojunghee, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bhoojunghee, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr Becher, pleaded that his co-defendant, Bhoojunghee, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 380 OF 1844.

In the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bhoop Thakoor, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bhoop Thakoor, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bhoop Thakoor, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 381 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Deokee Mahtoon, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Deokee Mahtoon, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Deokee Mahtoon, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 382 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 13th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Birjlal Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Birjlal Goalla, the defendant, on one bigga, five cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court; at length the plaintiff entered an action against the defendants in the moonsiff's court for 62 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Birjlal Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 15 rupees 10 annas penalty, under the provision of Clause 3, Section 5, of Regulation V.I. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 383 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bustee Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bustee Koyree, the defendant, on certain lands, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court : at length plaintiff entered an action against the defendants in the moonsiff's court for 62 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bustee Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 15 rupees 10 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 384 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirthoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Lokul Rowshungur, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Lokul Rowshungur, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Lokul Rowshungur, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 385 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Mehthan Jolaha, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Mehthan Jolaha, the defendant, on five cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 12 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Mehthan Jolaha, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 3 rupees 2 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 386 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Guneshee Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Guneshee Koyree, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Guneshee Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 387 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bhichook Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bhichook Koyree, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bhichook Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 388 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Pirthee Gazur, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Pirthee Gazur, the defendant, on seven cottas 10 dhoors of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 18 rupees 12 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Pirthee Gazur, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 4 rupees 11 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

G. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 389 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Runglal Thakoor, &c. defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Runglal Thakoor, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Runglal Thakoor, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 390 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 11th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Boosun Thakoor, &c. defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Boosun Thakoor, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the foudjdar court: at length plaintiff entered an action against the defendants, in the moonsiff's court, for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Boosun Thakoor, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 398 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Sheik Buxhun, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Sheik Buxhun, the defendant, on two biggas ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 75 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Sheik Buxhun, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 18 rupees 12 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 399 OF 1844.

In the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Hajul, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Hajul, the defendant, on three biggas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 150 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Hajul, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 37 rupees 8 annas penalty, under the provisions of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 400 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bheenuk Mehtoon, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bheenuk Mehtoon, the defendant, on two biggas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzda-ree court: at length plaintiff entered an action against the defendants, in the moonsiff's court, for 100 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bheenuk Mehtoon, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 25 rupees penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 401 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Jhummun Jolaha, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Jhummun Jolaha, the defendant, on one bigga ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court : at length plaintiff entered an action against the defendants in the moonsiff's court for 75 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Jhummun Jolaha, had no authority to make the agreement he had entered into with plaintiff, as he held no pottali from either malik or farmer for the lands in question. The moonsiff decreed the sum of 18 rupees 12 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW.

TEMPORARY JUDGE.

PETITION No. 402 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Sree Thakoor, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Sree Thakoor, the defendant, on two biggas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzda-ree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 100 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Sree Thakoor, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 25 rupees penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 403 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tichoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 16th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Phagoo Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Phagoo Koyree, the defendant, on two biggas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdar court: at length plaintiff entered an action against the defendants in the moonsiff's court for 100 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Phagoo Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 25 rupees penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 404 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Panchoo Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Panchoo Koyree, the defendant, on one bigga ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 75 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Panchoo Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 18 rupees 12 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 405 OF 1845.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Sheodyal Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Sheodyal Koyree, the defendant, on one bigga ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdar court: at length plaintiff entered an action against the defendants in the moonsiff's court for 75 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Sheodyal Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 18 rupees 12 annas penalty, under the provision of Clause 3, Section 5, Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1844.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 406 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Pullit Mehtoon, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Pullit Mehtoon, the defendant, on two biggas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdar court: at length plaintiff entered an action against the defendants in the moonsiff's court for 100 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Pullit Mehtoon, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 25 rupees penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1846.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 407 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 13th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tihoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Doolar Thakoor, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Doolar Thakoor, the defendant, on one bigga ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 75 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Doolar Thakoor, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 18 rupees 12 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 426 OF 1844.

IN the matter of the petition of Mr. J. E. Beecher, filed in this Court on the 19th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Boodhoo Koyree, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Boodhoo Koyree, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Beecher destroyed them, and planted sugar cane on the land. Proceedings were taken in the foudaree court: at length plaintiff entered an action against the defendants, in the moonsiff's court for 50 rupees damages. The defendant, Mr. Beecher, pleaded that his co-defendant, Boodhoo Koyree, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 427 OF 1844.

IN the matter of the petition of Mr. J. E. Beeher, filed in this Court on the 19th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 14th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Chottee Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Chottee Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Beeher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Beeher, pleaded that his co-defendant, Chottee Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 428 OF 1844.

IN the matter of the petition of Mr. J. E. Beecher, filed in this Court on the 19th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozuffierpore, under date 15th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, and Suddasheeb Roy, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Suddasheeb Roy, the defendant, on ten cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Beecher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 25 rupees damages. The defendant, Mr. Beecher, pleaded that his co-defendant, Suddasheeb Roy, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 6 rupees 4 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 429 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 19th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 13th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Rummun Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Rummun Goalla, the defendant, on one bigga five cottas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 62 rupees 8 annas damages. The defendant, Mr. Becher, pleaded that his co-defendant, Rummun Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 15 rupees 10 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 430 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 19th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 13th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bahoory Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bahoory Goalla, the defendant, on two biggas of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdaaree court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bahoory Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 431 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 19th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 13th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Chowdry Hajam, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Chowdry Hajam, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendant in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Chowdry Hajam, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 10TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 432 OF 1844.

IN the matter of the petition of Mr. J. E. Becher, filed in this Court on the 19th June 1844, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Tirhoot, under date the 29th February 1844, affirming that of the moonsiff of Mozufferpore, under date 13th December 1843, in the case of Alexander Nowell, on his demise, Mr. Cahill per Mr. Crawford, plaintiff, *versus* petitioner, Bukth Goalla, &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff sued for damages sustained by the destruction of indigo crop, which had been sown by Bukth Goalla, the defendant, on one bigga of land, who had entered into engagements to cultivate indigo for plaintiff from the years 1247 to 1253 Fuslee, and had received advances from him. In 1248 the first crop had been cut and carried away to plaintiff's factory. The stalks of the indigo plants were left on the ground for a crop in 1249, when Mr. Becher destroyed them, and planted sugar cane on the land. Proceedings were taken in the fouzdarce court: at length plaintiff entered an action against the defendants in the moonsiff's court for 50 rupees damages. The defendant, Mr. Becher, pleaded that his co-defendant, Bukth Goalla, had no authority to make the agreement he had entered into with plaintiff, as he held no pottah from either malik or farmer for the lands in question. The moonsiff decreed the sum of 12 rupees 8 annas penalty, under the provision of Clause 3, Section 5, of Regulation VI. of 1823, in favor of plaintiff, which he quotes in his decision as the law on the provision of which it is founded.

(The opinion in this case is the same as that given in Petition No. 295, page 322.)

THE 11TH NOVEMBER 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 237 OF 1843.

*Regular Appeal from a decision passed by the Principal Sudder
Ameen of Tirhoot, Uskruf Hosein, June 28th, 1843.*

RAEE KULDEEP RAM, APPELLANT, (PLAINTIFF,)

versus

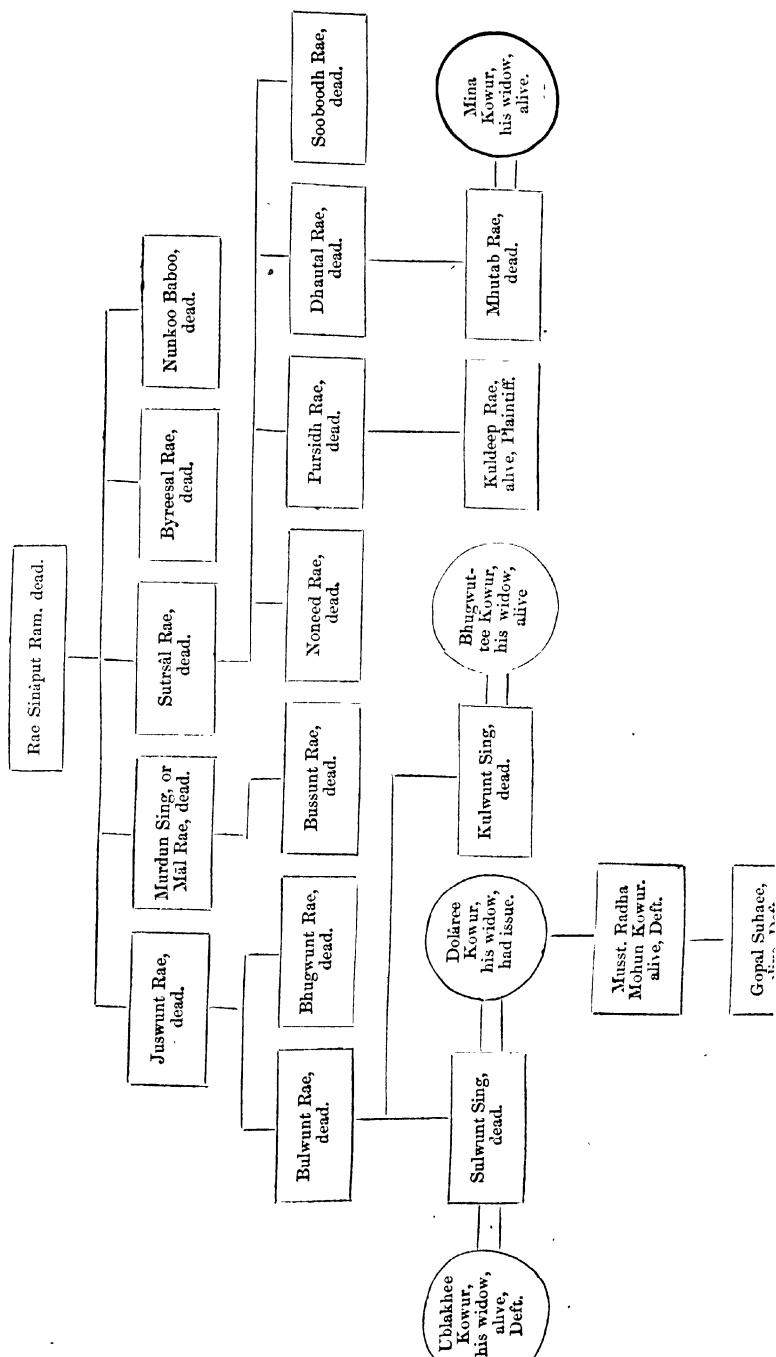
MUSST. UBHLAKHEE KOWUR, MUSST. RADHA MO-
HUN KOWUR, RAEE GOPAL SUIAEE, AND OTHERS,
RESPONDENTS, (DEFENDANTS.)

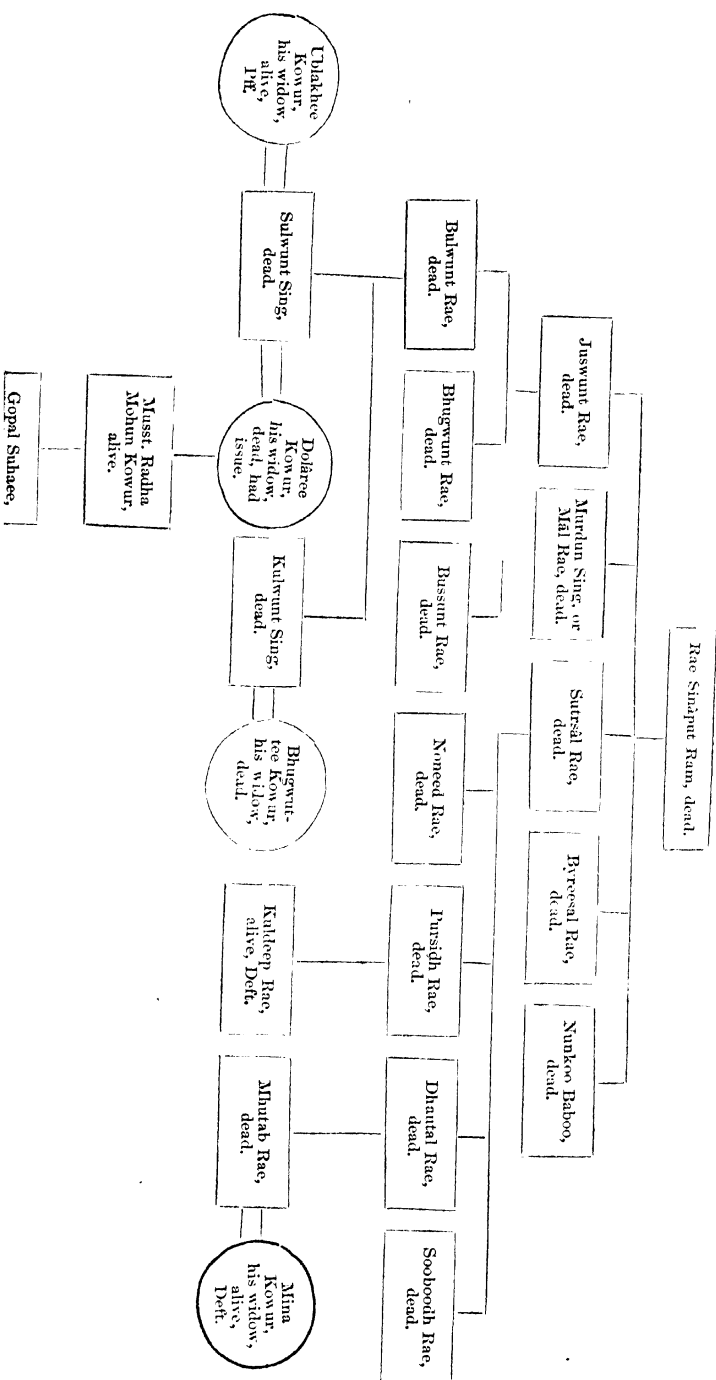
THIS suit was instituted by appellant, on the 12th February 1842, to recover from respondents certain lands, situated in the districts of Tirhoot, Sarun, Shahabad and Behar,—the whole estimated at Company's rupees 5,26,668-15-9-16.

The subjoined genealogical table exhibits the relationship of the parties named (the principals in the case) towards each other.

The claim of appellant is founded on his being the only male heir of the descendants of Juswunt Ram, eldest son of Sinaput Ram; he being the grandson of Sutrals, third son of the said Sinaput Ram, and, consequently, heir-at-law to the estate of Juswunt's descendants, who died without male issue. The respondent, Ubhlakhee Kowur, is the widow of the elder of these descendants Sulwunt Singh; his brother Kulwunt Singh's widow, was Musst. Bhugwutee, who died in 1244 F. uslee.

The principal sudder ameen, against whose decision the appeal has been preferred, has entered at length into the merits of the case, to shew, that the asserted right of appellant has no foundation; but such enquiry was so far superfluous, that, under the statute of limitation, the claim was no longer cognizable by the court after the legal interdiction of that statute became manifest. Sulwunt Singh died in 1224 F. (1817) and Kulwunt Singh in 1230 F. (1823.) The widows are declared, by appellant, to have had, and to have, no rights whatever beyond food and raiment so long as they should survive: consequently, their subsequent occupancy, if admitted,





furnished no legitimate ground for the delay which has attended the advance of his claim, to what, if at all, was his on the demise of their husbands. The present action was brought in 1249 F. (1842,) nineteen years after the death of the last survivor of the two brothers, whose heir he asserts himself to be; being seven years in excess of the period allowed by law. The fact of Sulwunt Singh having had a daughter by his other wife Dularee Kowur, which daughter had a son, Gopal Suhace, now living, is set at nought by appellant, as in no wise interfering with his right to the grandfather's estate; and this is a point which the Court will not, indeed cannot, enter upon.

The statute of limitation is pleaded by respondent, and is recorded as one of the grounds of the dismissal of the suit by the principal sudder ameen; which dismissal, with reference to that statute, and without entering further into the merits of the case, the Court affirm, with costs payable by appellant in both courts.

THE 11TH NOVEMBER 1845.

PRESENT :

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 282 OF 1843.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Tirhoot, Ushruf Hoscain, June 28th, 1843.

MUSST. UBILAKHEE KOWUR, APPELLANT, (PLAINTIFF,)

versus

RAEE KULDEEP RAM, MUSST. MINA KOWUR AND
OTHERS, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted, on the 29th March 1841, by appellant, as widow of Sulwunt Sing, deceased, to recover from respondents certain lands (as set forth) estimated at Company's rupees 83,296-13.

The appended table shews the relative position of the parties named towards each other.

Appellant states, that she is legally entitled to the hereditary estate of Bulwunt, father of her deceased husband Sulwunt, a portion of which is in possession of respondents, derived from the common ancestor Sinaput Ram; that Sulwunt and Kulwunt were the husbands respectively of herself and Musst. Bhugwutee, and died without male issue; that after this Bhugwutee died, and she (appellant) is heir to the three; that Pursidh Ram (a grandson of Sinaput) had one son Mhutab Ram, who died, leaving a widow, Mina Kowur, without male issue; that after Mhutab's death, Kuldeep Ram sued Musst. Mina in the Patna provincial court, for the whole of Mhutab's estate, when she fraudulently agreed to share the property between them, which was done by filing a sooloonamch (or deed of adjustment,) upon which a decree was passed in conformity with their wishes; that Musst. Mina was entitled to half of the entire estate, but the other half was the right of Sulwunt and Kulwunt,—Kuldeep, under the usage of the family, not being entitled to any thing; that if Musst. Mina chose to resign the moiety she gave up, it could only be her own half portion—she had no authority so to dispose of any part of her's (appellant's); that there cannot be a doubt of her (appellant's) right to what she now sues for, inasmuch as Sulwunt and Kulwunt, on the one part, and Pursidh Ram, on the other, with a view to prevent future disputes, agreed to a partition, and executed an ikramamah (or deed of agreement) appointing Muha Rajah Mitrjeet Singh arbitrator; but Mitrjeet Singh was a great man and under no obligation to act, so did nothing, and died; that she (appellant) now prays that a partition of the whole ancestral property may be made, and the full half, to which she is justly entitled, judicially assigned to her.

The answer is, that Sulwunt and Kulwunt having died without issue by their widows, the latter were entitled to food and raiment only: various decisions are cited in support of this. Kuldeep (the plaintiff and appellant in No. 237) claims to be heir of the whole; while those in possession, by purchase, argue the legality of their title to what they hold under the fact of such purchase having been made under decrees of court, or from Kuldeep, or Musst. Mina, who were competent to sell.

As in No. 237, it is unnecessary to enter upon any investigation of the relative rights of the parties: the statute of limitation applies equally to that case and the present; which was not brought before the courts for twenty-four years after the demise of appellant's husband, which demise constituted the original ground of action.

With reference to the said statute, the Court affirm the dismissal of the claim preferred; with costs payable by appellant in both courts.

THE 11TH NOVEMBER 1845.

PRESENT :

W. B. JACKSON,

OFFICIATING TEMPORARY JUDGE.

CASE No. 253 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Rajshahye.

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|--|--------------------------------|
| 1. KISHEN MUNEE DASSEE, MOTHER OF
RAMCHUNDER AND GREESCHUNDER,
MINORS, | } APPELLANTS,
(PLAINTIFFS,) |
| 2. HURRISCHUNDER MUJMOODAR, | |

versus

DOORGACHURN RAI, HEIR OF KEENOO, DECEASED,
AND PEAREE MOHUN CHUNDER MUJMOODAR, HEIR
OF JADUB CHUNDER MUJMOODAR, RESPONDENTS,
(DEFENDANTS.)

Claim for possession of Muhal Renah, laid at 9985 Rupees.

THIS claim was brought in the zillah court of Rajshahye, by the plaintiff, on the 24th June 1842. The plaintiffs state that 12 annas muhals Kusbah, &c., and muhals Renah Kuddeempara, &c., were purchased by Jugut Chunder, her husband, in 1206 and 1207, in the name of Jadub Chunder, his son, then a minor; that Jadub Chunder is therefore only entitled to $\frac{1}{4}$ th of the said estates, and the remaining $\frac{3}{4}$ ths belong to plaintiff, as the mother of Ramchunder and Greeschunder, and to Hurrishunder,—these three, with Jadub Chunder, being sons of Jugut Chunder. The defendants deny the purchase by Jugut Chunder, and state that it was a bona fide purchase by Jadub Chunder in his own name, and that his brothers and mother have no claim to any portion of it.

The principal sudder ameen, on the 22d June 1844, dismissed the claim, considering the purchase by Jugut Chunder not sufficiently made out by the documents and evidence adduced in support of it.

The plaintiffs, under date the 19th September 1844, appealed to this Court. It appears from the papers filed that Jadub Chunder sued, in the civil court of Rajshahye, in his own name, against Rajah Bishnath Rai, [who had ousted him from the estate, in dispute,] for possession of the estate, as his right; and that, on the 8th August 1811, the register of that zillah gave a decree

in his favor, which has never been set aside. There can be no doubt, therefore, that Jadub Chunder has held possession since that date: no opposition was offered during the progress of the case by his father, Jugut Chunder, or by any other claimant. In 1227 and 1229 the estates were given in kut kewalah by Jugut Chunder to Kenoo Rai, and the conditional transfer was allowed to become final. Kenoo Rai's right to possession was established, 7th May 1827, on his suit in the civil court, which decision was confirmed by the Sudder Dewanny Adawlut, 12th September 1834. The *prima facie* evidence is therefore strongly in favor of Jadub Chunder, his heirs and assigns, the defendants: their right was established in 1811, and has been since repeatedly acknowledged and proved by the exercise of acts of ownership. It is incumbent on the plaintiff first to account for the delay in suing since 1811; and, secondly, to prove that the purchase in 1206 and 1207 was made by Jugut Chunder in the name of his son Jadub Chunder.

On the first point Hurrishunder, one of the appellants, states that he was a minor at the time of the decree of 1811 being passed, that he only reached majority in 1248 or 1841. This fact is however by no means clear; some of plaintiff's witnesses asserting that Jugut Chunder, his father, died 25 years before the date of their depositions in 1843. The two statements are inconsistent; but it seems probable that he was a minor at that period, and that the rule of limitation does not apply. On the second point, plaintiffs refer to an *ewuznameh*, dated 13th Assar 1225, filed in another case before the moonsiff of Nattore, in which Jadub Chunder acknowledges that his name was entered merely as son of the real owner, Jugut Chunder; also to a petition of Jadub Chunder, filed in the *fouzdaree* court, admitting the same fact, the object of filing which in that court does not appear; but neither of these documents are proved to my satisfaction. The oral evidence of several witnesses is also adduced; but these are partially at variance with the plaintiff's own statements, and by no means sufficient to establish, in a satisfactory manner, the main fact of the *benamee* purchase by Jugut Chunder, upon which the whole case of the plaintiff hinges; more especially with reference to the decrees and documents brought forward by the defendants, which shew possession for a long period of years, and that their right has been acknowledged by repeated decrees of civil courts, although as the present claimants were not parties to those suits, they are not debarred from now bringing forward their claim. I think the claim not proved, and confirm the decision of the principal sudder ameen, with costs of both courts against plaintiff.

THE 12TH NOVEMBER 1845.

PRESENT:

J. F. M. REID and

A DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 77 OF 1838.

Regular Appeal from the decision of the Judge of Hooghly.

SHAM CHUND BOSE AND BENODE CHUND BOSE,
APPELLANTS, (PLAINTIFFS,)

versus

DYAL CHUND BOSE, GOBIND CHUND BOSE, BIS-
SUMBHUR BOSE, DECEASED, (HEIR HAS NOT APPEARED,)
SREEKISHEN SUNDIAL, JYKISHEN MOOKERJEE, AND
KALEE KANT SURKAR, RESPONDENTS, (DEFENDANTS.)
JUGOMOHUN OOVERDAR, DECEASED, HIS HEIRS, RAJ
KISHEN, JY KISHEN, AND HERNATH.

THE plaintiffs claim possession of 2-3rds talook Benchee, a putnee muhal, and to reverse a sale under Regulation VIII. 1819, laid at 5,462 rupees.

This is a claim to reverse a putnee sale, on the ground that Dyal Chund and Gobind Chund, defendants, had purposely defaulted, and then purchased, in a feigned name, at the sale. The judge dismissed the claim, and the plaintiffs appealed to this Court. The grounds on which they appeal are as follows.

1. That the putnee muhal was purchased by defendants, who are defaulters, in a feigned name [furzee.]

2. That the person whose name was entered as purchaser in collectoree was Jykishen, then record keeper of the collectoree; and that the collector's omlah are forbidden by regulation to purchase.

3. That the plaintiffs were minors when the putnee estate was allowed to fall in balance.

4. That the defendants, Dyal Chund and Gobind Chund, have no right to the estate, which was purchased by their father, Rai Mohun Bose, with his own acquired money, and consequently descends to the plaintiff; that the defendants, Dyalchund and others' statement, that it was purchased by Nundooolal Bose, the grandfather of both parties, in the name of Rai Mohun Bose, is not true.

This case is so closely connected with case No. 189 of 1841, special appeal, that they must both be taken up together.

JUDGMENT OF MESSRS. REID AND JACKSON.

The above grounds of appeal are somewhat inconsistent with each other; but the first point to be considered is, whether the sale, under Regulation VIII. 1819, can be set aside.

By Section 14, Regulation VIII. 1819, no sale under Regulation VIII. 1819, can be reversed, unless the zemindar, at whose instance the sale took place, is made one of the defendants; the zemindar in this instance was the Rajah of Burdwan, who is not one of the defendants.

No. 1. We do not consider that the *benamce* purchase by the defaulters, Dyal Chund, &c., is established; but we think it sufficiently plain that Jugomohun bought the estate in the name of his son Jykishen, and paid for it himself. There is no proof to our satisfaction that the durputnee is a mere pretence; the ikrarnameli, filed in the other case No. 189, being in our opinion entitled to no reliance, and, even if genuine, not valid, as executed by Jykishen, during his father, Jugomohun's life time, whose interests, as owner of the putnee, it prejudices: but even if the purchase by defaulter had been proved, this would be no good ground for reversing the sale. The provisions of Regulation XI. 1822 do not apply to putnee sales; nor do those of Section 29, Regulation VII. 1799, since annulled. Under the terms of Section 9, Regulation VIII. 1819, "every one not the actual defaulter shall be free to bid." The defaulter, therefore, was not free to bid. In this case, it is not asserted, that he did bid; but that some one bid for him; but there is nothing in the regulations to shew that, had this happened, it would have vitiated the sale. The collector might have refused the bid.

No. 2. That the purchaser was one of the collector's officers is no ground for reversing the sale; though the thing purchased would be liable to confiscation if Regulation XI. 1822 applied, which it does not.

No. 3. The minority of the plaintiffs, at the time the balance accrued, is no good ground for reversing a putnee sale; the rent must be paid or the estate sold.

No. 4. The dispute regarding the inheritance does not come under consideration unless the sale is reversed. The judge should not have entered upon this point.

On the whole it appears to us that this case and No. 189 shew symptoms of collusion between the plaintiffs, Sham Chund and Benode Chund, and the defendants Dyal Chund and Gobind Chund, their object being to oust the third party, Jugomohun Mookerjee, from the putnee claimed, which appears to have been bought by him in the name of his son Jykishen.

We therefore confirm the decision, with costs, and, at the same time, observe that the judge should not have entered upon the point of inheritance.

MR. DICK'S JUDGMENT.

The only two points for consideration in this suit, seem to me to be:—1st. Ought the zemindar to have been made a party or not? 2d. Was the real purchaser Dyal Chund, one of the defaulters or not? In my opinion, the zemindar very properly was not made a party. The law [Clause 1, Section 14, Regulation VIII. 1819] declares: “It shall be competent to any party desirous of contesting the right of the zemindar to make the sale,” &c., “to sue the zemindar for the reversal of the same.” This is not a suit contesting the right of the zemindar to make the sale; but the right of the purchaser, a defaulter, to make the purchase; and I think it would be hard to drag in the zemindar in every such case, in which there is no cause of complaint against him. On the 2d point, I am of opinion, that Dyal Chund, one of the defaulters, was the real purchaser, for the following reasons. It is in proof, that the putnee was purchased by Dyal's usual mohltear, for himself, and afterwards, as he declared for Jykishun, the record keeper of the collectorate, where the sale took place. Jykishun gave it in durputnee immediately to Kalee Kant, a relative of Dyal Chund,—Dyal being his surety, and Jykishun received 7,100 rupees for the durputnee, which went to pay in part the purchase money of the putnee; and lastly, Dyal Chund paid the revenue of the putnee for the six months of 1241. These facts, consecutively, form a chain of circumstantial evidence, in proof of Dyal being the real purchaser, rarely procurable, and to my mind irresistible. As it is indisputable, that Dyal Chund was a defaulter, his purchase is illegal under Section 9, of the above cited regulation, and the appeal should be decreed.

With regard to Jykishun, if he were the purchaser, the purchase would be legal, for no doubt Regulation XI. 1822 does not apply to a putnee sale. I consider however that the omission of the restriction originates from an oversight of the legislature at the time of declaring putnee sales should be held at the collectorate; because the very same reason appertains to them, as to Government sales for arrears of revenue.

THE 12TH NOVEMBER 1845.

PRESENT :

J. F. M. REID and

A. DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 189 OF 1841.

Special Appeal from the decision of the Judge of Hooghly.

JUGOMOHUN MOOKERJEE, DECEASED, JYKISHEN MOOKERJEE, AND RAJ KISHEN MOOKERJEE, HIS HEIRS,
APPELLANTS,

versus

KALEE KANT DEB, DURPUTNEEDAR OF LOT BENCHEE, DYAL
CHUND BOSE, GOBIND CHUND BOSE, AND KISHEN-
GUTTEE, SURETIES, RESPONDENTS.

THIS suit was originally brought to obtain 4,982 rupees, durputnee rent of lot Benchee, principal and interest. Plaintiff had brought a summary suit against the defendants, under Regulation VII. 1799, for rent, which was decided *exparte* in his favor, and the durputnee sold to realize the balance, and bought by plaintiff himself. That summary decision cannot now be altered, as more than one year has since elapsed [Regulation VIII. 1831.] The present suit is for the remainder of the balance due under the summary decree, after deducting the price paid by plaintiff for the durputnee at auction; and is brought in order to obtain remainder due under the summary decree, which could not issue against real property excepting the tenure on which the balance formed.

On the 6th February 1838, the principal sudder ameen decreed in favor of plaintiff.

On 14th April 1840, the zillah judge reversed the decision, and rejected the claim. The grounds recorded are that the summary decision was *exparte*; that the *kuboolat* of defendant is written in favor of Jykishen, son of plaintiff, not of plaintiff himself; and that the other proofs offered by plaintiff, that he is the real owner of the putnee, though he purchased it in the name of his son, are insufficient. Even though this is not contested by Jykishen, the judge refers to Circular Order No. 20, 29th July 1809, which he states will not allow such a claim to be admitted.

The Sudder Dewanny Adawlut admit the special appeal, on the ground that the summary award, not having been appealed from within one year under Regulation VIII. 1831, cannot now be questioned; that the refusal to award the sum claimed, because the kubooleut of defendant was in favor of Jykishen, the plaintiff's father, and not in plaintiff's own name, was incorrect.

JUDGMENT OF MESSRS. REID AND JACKSON.

The summary award decrees the claim now advanced in the regular suit, and we see no reason to doubt the correctness of that award; but that award, having become final by the expiration of one year from the date of it, the justice of it cannot now be questioned: and the principal sudder ameen ought not to have entered into the merits of the claim; but have assumed the claim as established by a judicial award already passed, and have decreed issue of that award upon the defendants. It appears to us, that the plaintiff, having distinctly shown by decisions of Regulation V. and Regulation VII., that he was actually in possession as putneedar, as well as by having paid the putnee rent by lodging it, when the estate was in balance; the mere circumstance that the kabooleut is in the name of his son, cannot vitiate his claim; that son having all along allowed that the property belonged to his father. Again, Kaleekant asserts that the defendants are owners of the putnee, which was bought by them in the name of Jykishen. He files an ikrar-namch, bearing signatures of Jykishen and defendants, addressed to him, Kaleekant, acknowledging this, and exonerating Kaleekant from all claims on account of the durputnee, which is stated to be a mere pretence. This document has not been proved, and we place no confidence in it; moreover the present claim was brought by Jugomohun and not by Jykishen, and such an acknowledgment on the part of Jykishen could not affect the right of Jugomohun. He, Jykishen, had, in our opinion, no power to make such an engagement in his father's life time. Even if genuine, it is not valid.

We therefore reverse the decision of the zillah judge, and award the plaintiff's claim, with costs of all the courts against the defendant.

MR. DICK'S JUDGMENT.

In this case, I hold that a summary suit being good only against certain specified property; although under Section 6, Regulation VIII. 1831, that summary award is not to be questioned, except on a regular suit instituted to upset it within one year from its date,—still that restriction is applicable only *quoad* the property which is liable under the summary award. The restriction has nothing to do with respect to a regular suit, instituted by the holder of the summary decree to recover his arrears, from the sale of property not

liable under the summary decree, under Clause 4, Section 18, Regulation VIII. 1819. I take it, the legislature intended that real property should not be liable, except after a full and complete investigation of the merits, which do not obtain in a summary suit. Further, a summary decision, at any rate, should be received only as evidence *prima facie* of the arrear; and the other party should be allowed to impeach the justice thereof, or to shew the same to have been irregularly or wrongfully obtained. In other words, the defendant should be at liberty to impeach the original justice of the judgment, by shewing that the court had no jurisdiction; or that he never had any notice of the suit; or that it was procured by fraud; or that, upon its face, it is founded on mistake; or that it is irregular and bad by the local law *fori rei-judicate*. Otherwise, a court may be called upon to enforce what it sees and knows to be iniquitous. Vide Story's Conflicts of Laws, Cap. XV.

THE 12TH NOVEMBER 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 6 OF 1844.

*Special Appeal from the decision of the Principal Sudder Ameen of
Zillah Tipperah.*

NUND KISHIWUR TEWAREE, (PLAINTIFF,) APPELLANT,

versus

MAHOMED WASILOODEEN, RAM NIDHEE DEO, AND
RAM MANIC DUTT, (DEFENDANTS,) RESPONDENTS.

THE plaintiff brought this action before the moonsiff of Soodaram, in zillah Tipperah, to recover from the defendants 300 Company's rupees under two deeds denominated *souda-putr*, dated the 31st Bysack 1249 B. S., whereby the defendants bound themselves, in consideration of an advance of 150 rupees, to deliver to the plaintiff, on the 25th Sawun following, 300 maunds of fine *urva rice*, or, in default of delivery, to pay the value at the rate of the day. They having failed to perform their engagements, the plaintiff sued to recover the value of 300 maunds at 1 rupee per maund.

The defendants pleaded that the plaintiff had lent them 150 rupees on a stipulation that he was to receive 5 per cent. per mensem interest; but had had the bonds drawn out in the form of engagements to deliver rice. They did not produce any evidence in proof of their assertion.

Moonshee Ruhnutoolla, moonsiff of Soodaram, on proof of the execution of the engagements, decreed to plaintiff the sum of 300 rupees, the price of 300 maunds of rice with costs of suit; refusing to allow interest on the plea that it could not be awarded in a suit for the value of goods.

On appeal by the defendants, Moolvee Abool Khyr Mahomed Ali, the principal sudder ameen of Tipperah, altered the decision of the moonsiff. He observed that the moonsiff's decision allowed illegal interest. He therefore decreed in favor of the plaintiff only the original sum lent 150 rupees and 4 rupees 14 annas interest thereon from the date of the engagements to the date of institution of the suit; i. e. 3 months and 7 days; making a total of 154 rupees 14 annas, with interest thereon to the day of payment, and proportional costs.

A special appeal was admitted on 29th November 1843 [present J. F. M. Reid] to try whether, with reference to Construction No. 487, the interest regulations apply to this case.

The appeal came on before Mr. Gordon, who, on the 30th November 1844, having gone through the proceedings, referred the case to a full bench.

The Court are of opinion that this is a case of contract to supply grain, and not an attempt to evade the provisions of Section 9, Regulation XV, 1793, relating to usury. They think the contract should be enforced to its full extent. They therefore decree the appeal, and, reversing the decision of the principal sudder ameen, confirm that of the moonsiff, and decree the amount allowed, with interest from the date of the moonsiff's decision and costs in all the courts.

THE 17TH NOVEMBER 1845.

PRESENT:

A DICK,

JUDGE.

CASE No. 47 OF 1843.

*Regular Appeal from the decision of the Principal Sudder Ameen of
Midnapore, Ram Mohun Raee.*

KONWUL SAWUNT PUTNAIK, PAUPER, APPELLANT,
(PLAINTIFF,)

versus

GOLUK SAWUNT PUTNAIK, AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

*Pleaders—Wulee Oolla and Usmut Oolla for Appellant; and Neel
Munee Banerjeeah for Respondents.*

SUIT laid at Company's rupees 10,407, 5 annas, 12 gundas, 2 cowries, for possession on a $\frac{1}{4}$ th share of a paternal property, rent free and paying Government revenue.

The appellant was plaintiff with others who did not appeal. They founded their claim on a statement, that the rent free property was acquired by their ancestor, Chowdree Sawunt, who had five sons, and that the property paying Government revenue, was purchased by the five sons conjointly, while living together. The respondents, defendants, denied the claim as just, and declared the statement false. In proof, they filed the deeds for the rent free lands, five in number, all in the name of their father, Jyram, the fourth son of Chowdree Sawunt, or of his, Jyram's, eldest son; and the deeds of purchase of the lands or villages paying Government revenue, all in the name of Lukee Churn, a younger son of Jyram; and they stated that the rent free lands had been acquired by their ancestor Jyram, and the maal villages, or lands paying Government revenue, had been purchased by Lukee Churn.

The principal sudder ameen, for the reasons recorded in his decision, gave judgment for defendants and dismissed the suit.

JUDGMENT.

Appellant has produced no proof to substantiate his claim, save a number of witnesses of no consideration. On the other hand, the respondents have filed five sunnuds of grants of the rent free lands, all in the name of Jyram or of Jyram's son. Had they been acquired by Chowdree Sawunt, it is unaccountable, and incredible that he should have had all the deeds made out in the name of one,

and that one a younger son, and of his son, when he had himself five sons. In like manner, the purchase deeds are in the name of Lukee Churn, a younger son of Jyram. If purchased by the five brothers conjointly, why all made out in the name of a younger son of one of the brothers only? Further, there is not a particle of proof, that any of the descendants of any of the other four brothers hold possession on any of the rent free or Government revenue lands; and plaintiffs, instead of bringing them forward as witnesses to testify to it, have included them among the defendants, to prop up their claim.

Appeal dismissed; the lower court's decision confirmed.

THE 17TH NOVEMBER 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 154 OF 1844.

Special Appeal from a decision passed by the Additional Judge of Behar, W. St. Quintin, 18th May 1843,—modifying a decree passed by the Moonsiff of Gya, Mohummud Ibrahim, 9th September 1842.

RAJAH MOD NURAIN SINGH, APPELLANT, (PLAINTIFF,)

versus

LALA BUKHT LAL, RESPONDENT, (DEFENDANT.)

THIS suit was instituted by appellant, on the 28th January 1842, to recover from respondent Company's rupees 283-10, principal and interest, being arrears of rent due on mouzah Lodipore, pergunnah Duk'hner, for the Feslee years 1247 and 1248; and, with reference to such arrears having occurred, to cancel the mokurree pottah (or lease granted in perpetuity) of the said mouzah.

The plaint set forth, that mouzah Lodipore was let on a mokurree jumma (or fixed rent) of Sicca rupees 201, to Race Pirthee Singh, grandfather of defendant, by appellant's father, Rajah Mitrjeet Singh, which lease descended to respondent; that there was a balance of rupees 34-15-1 due for 1247 F., and nothing was paid for 1248; that appellant sues to recover this balance, with such interest as may accrue to the date of decision; that the condition of all such tenures being, that on failure of due payment of the stipu-

lated rent, they become forfeited, appellant further prays, that the pottah held by respondent may be cancelled and declared of no effect.

The answer admits the mokurruree jumma; but argues, that appellant should be nonsuited, inasmuch, as he has mixed up two distinct claims in the same action, viz. balance of rent and forfeiture of tenure; which latter is not admissible merely as a dependent consequence of the former.

In reply, appellant states, that he can produce precedents shewing that forfeiture of tenure has been decreed on the sole ground of balance of rent on the part of the lessee.

In his rejoinder, respondent denies being in balance; asserting, that, so far from this, he has paid in excess rupees 44-8-1; that in 1245 there was a balance in his favor of rupees 191-8-1; that he paid rupees 150 in 1246,—281 in 1247,—and 25 in 1249,—making a total of 647-8-1; whilst the demand for 1246, 47, and 48, at 201 rupees per annum, amounts only to 603; leaving a balance due to him, as already stated, of rupees 44-8-1.

The moonsiff determined, that the arrears claimed were due; and that the tenure was forfeited in consequence of their occurrence. He quoted precedents,—of the sudder ameen, the judge, the additional judge, and Sudder Dewanny Adawlut, filed by appellant, as shewing that such tenures had been declared forfeited under Section 15, Regulation VII. of 1799, and Clause 4, Section 18, Regulation VIII. of 1819; and observed, that several of these decisions had been upheld in appeal by the Sudder Court; and that the proceeding of the additional judge, of 28th May 1842, in the case of Rajah Mod Nurain *versus* Musst. Man Kowur, and others, returning the case for revision, on the ground that a mokurruree tenure was *not* forfeited by default of payment of rent, could not supersede the opposing decisions confirmed by the Superior Court. In conclusion, he adds, that the decision of the additional judge in the case of Rajah Himmut Ali Khan *versus* Meer Kasim Ali, was to the very point in question, determining, as it does, that a balance of rent involves the forfeiture of a mokurruree tenure.

In appeal, the additional judge affirmed that portion of the moonsiff's decision, which declared the arrears claimed to be due:—the remaining portion, deciding the forfeiture of the pottah under which the lands were held, he reversed;—observing, that, under Clause 7, Section 15, Regulation VII. of 1799, an hereditary tenure of the nature of that before the court, was not liable to be cancelled on the ground of arrears, but that the proper mode of proceeding was to bring the tenure to sale for the balance. He added, that he had on a former occasion, in the instance cited by the moonsiff, acted on the principle maintained by that functionary; but he had since determined differently, and his last judgment, not the prior one, was to be abided by.

A special appeal was applied for and admitted, on the discrepancy of opinion and result, in two cases decided by the same judge,—the same point being to be adjudicated.

The Court observe, that the only question legally cognisable in the case before the zillah authorities, was that of the existence, or otherwise, of the balance of rent, demanded as due under the mokurrurce tenure held by respondent; and that the contingent forfeiture of the tenure, on a balance being established, was altogether a distinct matter introduced by the plaintiff himself as an incidental consequence, which, if only with reference to the stamp on which the plaint was filed (which covered only the amount sued for as a balance) should not have been entertained and considered: a separate independent action being manifestly necessary. With this reservation, and withholding all opinion upon the abstract question of forfeiture, improperly entered upon by the additional judge and moonsiff, they reject that portion of the claim, affirming the decree for rent passed in favor of appellant; who will pay all costs incurred by the special appeal thus disposed of.

THE 17TH NOVEMBER 1845.

PRESENT:

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 186 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Backergunge.

KALEE PERSHAD, AND OTHERS, APPELLANTS, (PLAINTIFFS.)

versus

COLLECTOR OF BACKERGUNGE, AND OTHERS,
RESPONDENTS, (DEFENDANTS.)

To obtain possession of Kismut Duree Bahir Chur with wasilat, and to reverse the sale of that estate held by the collector.

The plaintiff sued in the zillah court of Backergunge to reverse the sale of Kismut Duree Bahir Chur, a mowroosee talook in pergunnah BooZoorgomeidpore, the khas property of Government; alleging that the sale was illegal for several reasons; that the balance was not properly calculated; that the collector had no authority to sell without first gaining a summary decree for the balance; and that the commissioner had sent an order to the collector, directing the sale to be postponed.

The principal sudder ameen, on the 9th January 1844, rejected the claim, stating that he could find no irregularity in the proceedings of sale, and entertained no doubt as to the competency of the collector to sell.

The plaintiff appeals to this Court, contending that the collector could not legally sell his estate, without first obtaining a decree in the summary suit court; and, generally, upon the same grounds as he had advanced in the court of first instance.

OPINION.

It is admitted by both the parties that the estate was a heritable talook, within the Government khas mehal Boozoorgomeidpore. I am, therefore, clearly of opinion that under Section 2, Act VIII. 1835, the collector was at liberty to sell for arrears of rent, without obtaining a summary decree. The section just cited, including within its provisions sales under Section 25, Regulation VII. 1799, which latter enactment distinctly points out that when an estate is under khas collection, on the part of Government, the collector is authorized to proceed against dependant talookdars, and under tenants of every denomination, who are in arrears, "without any previous application to the dewannee adawlut,"—the meaning and intent of which is, evidently, without obtaining previously a summary decree. Regarding the competency of the collector to sell, therefore, I am of the same opinion as the principal sudder ameen; and if the conditions of sale mentioned in Act VIII. 1835, have been duly observed, the sale must stand. On looking over the sale proceeding and papers, it appears to me that nothing essential to the validity of the sale has been omitted. The plaintiff has given no proof that the balance was incorrectly stated against him; and with reference to the order of the commissioner, postponing the sale, it is evident that this order was obtained by falsely stating that the sale was fixed for the 24th, when the 14th was the day actually fixed; and at the time the commissioner passed the order, it was too late for it to reach the collector in time to prevent the sale. This circumstance does not in any respect invalidate the sale.

Ordered, that the decision of the principal sudder ameen be confirmed with costs.

THE 19TH NOVEMBER 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 58 OF 1844.

*Regular Appeal from the decision of the Principal Sudder Ameen of
Midnapore.*

DILJAN BEEBEE, PAUPER, WIDOW OF SYUD AHMUD,
DECEASED, APPELLANT, (PLAINTIFF,)

versus

MUSST. ASLOO BUKAOOLLA AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

THE plaintiff claims 50,000 rupees under a marriage settlement, from the defendants, who are in possession of the property left by her deceased husband as his heirs.

The defendants deny the execution of the deed of settlement, and state that the property of Gholam Shurf, the person from whom both parties inherit, was divided under a tukseemnameh, which gave only 5 annas to Syud Ahmud, the husband of plaintiff; 5 annas to Bakaoollah, his own brother, defendant, and 6 annas to Illahee Buksh, and others, children by a second wife of Gholam Shurf. The deed of settlement therefore cannot in any manner give a claim against more than the 5 annas share of plaintiff's husband.

The principal sudder ameen, on the 2d August 1843, dismissed the claim on the ground that the kabceennameh, or deed of marriage settlement, was not proved. From this the plaintiff appeals.

OPINION.

The claim of the plaintiff rests, in the first instance, on the kabceennameh, which is filed and attested by several witnesses whose names are attached to it. These witnesses give a very clear account of the wedding and the execution of the deed: one or two state that they do not recollect circumstances which others recollect perfectly; but, their forgetting the facts, does not in the slightest degree affect the evidence of those who remember and swear to them. On the main point, the marriage, all the witnesses agree; and most of them on the execution of the deed and its contents.

The principal sudder ameen lays stress on the circumstance of the document being written first on plain paper, and stamped afterwards. This circumstance is not sufficient to throw suspicion on the document. The parties are always at liberty to adopt such a course. It is filed bearing the proper stamp, and cannot, therefore, be objected to on that ground. Even the defendants admit that the marriage was good, but say that plaintiff publicly renounced her claim to the *dein mehr*. Of the renunciation no proof is offered: but the defendant's statement is an admission of the claim to *dein mehr*. We are quite satisfied with the evidence of the witnesses to the deed in question; and consider it a good, genuine, and valid document, under which the plaintiff's claim, is beyond a doubt, against the whole of the property left by her husband, as far as required to satisfy the amount of the claim, 50,000 rupees.

The decision of the principal sudder ameen is, therefore, hereby reversed, and the claim of plaintiff decreed against the effects of her deceased husband. But it remains to decide how far this decree can issue against the defendants, and how far they are liable to the costs incurred in this case. To this end enquiry must be made what property was left by the deceased, Syud Ahmud, and in whose possession it now is. *Ordered*, therefore, that the principal sudder ameen be directed to call on plaintiff to give in a list of the property left by her deceased husband, in possession of each of the defendants; and to file proofs of her statement, which the opposite party may be allowed to object to, and supporting their objections with proof documentary and oral. After completing the enquiry, the principal sudder ameen will pass order, awarding costs according to the result of his investigation.

THE 19TH NOVEMBER 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 87 OF 1845.

Special Appeal from a decision of the Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, passed February 23d, 1844, affirming a decree passed by the Sudder Ameen, Sulamut Ali Khan, May 12th, 1843.

HENRY CHRISTIAN, APPELLANT (DEFENDANT,)

versus

JAMES PARKER, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, on the 6th May 1842, to recover from appellant the sum of Company's rupees 570-11, the

value of certain hides and horns, with reference to the following facts and circumstances.

Respondent's servants had charged appellant and his servants, before the magistrate, with having carried away from their master's factory, by force, 200 hides, 150 horns, 25 maunds of kharce nimuk, (sulphate of soda) 10 buffaloes, and 50 rupees. The accused denied the charge; but the magistrate, deeming the violence to be proved, punished them, without any recorded reference to the amount of property taken. At the conclusion of his final order disposing of the case, he says, 'let the hides under charge of the court be given to the prosecutor (respondent) on his receipt, and let him be informed, that, if he has any claim for the remaining hides and horns, he may sue for them in the civil court.' Upon this, the present suit was instituted, for the whole of the items above enumerated. Appellant opposed the claim, praying to be permitted to call witnesses in disproof of it; pleading, at the same time, that respondent had evidently received back some of the hides from the criminal court, but had nevertheless sued for the entire number (200) originally stated to have been taken from him.

The sudder ameen would not allow appellant's witnesses to be summoned, on the ground that a negative could not thus be established; and, adjudging to respondent the value of the 200 hides, reserved to appellant the right to sue, should he see fit, for the refund of the amount of as many as should be then proved to have been restored by the magistrate.

The sudder ameen's decree was affirmed, in appeal, by the principal sudder ameen; the latter observing, that, the aggression having been proved in the criminal court, appellant could not legally claim a right to have his witnesses called and examined in the civil court.

The above decision appearing to the Court to be both unjust and illegal, the special appeal preferred against it was admitted, and the case has now come regularly on for revisal. With reference to those points in the proceedings which the Court deem objectionable, viz. the refusal to summon appellant's witnesses; the award of the value of the entire number of hides in the face of a judicial record of a portion having been restored; and the order compelling appellant to bring a fresh action to recover the value of those so restored; the Court hereby direct, that the decision passed and now appealed from, be annulled and of no effect; and that the case be returned, to be retried upon its merits, with a due observance, in the new trial, of the law and practice of the courts.

THE 20TH NOVEMBER 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 40 OF 1843.

*Regular Appeal from the decision of the Principal Sudder Ameen of
Zillah Midnapore, Ram Mohun Raee.*

SALT AGENT OF TUMLOOK, APPELLANT, (PLAINTIFF,)

versus

MUDUN MOHUN MITR, RESPONDENT, (DEFENDANT.)

*Pleaders—Purshum Koomar Takoor for Appellant, Neel Munce
Banoorjeah, Mr. Waller, and Mr. Sevestre for Respondent.*

SUIT laid at Company's rupees 16,738, 13 annas, 2 pie, embezzlement of salt and wastage.

The appellant, on appointing a person named Bhubun Mohun Mittr, a salt darogah, called upon him to give security to the amount of 10,000 Company's rupees. The respondent came forward as surety for five thousand Company's rupees and was accepted and deposited as security Company's paper to that amount, and entered into a security bond in which he bound himself generally and indefinitely for the conduct and honesty of his principal. The principal eventually became a defalcator to a large amount, to recover which this suit was instituted against the principal and surety, and a decree given. Respondent, the surety, petitioned for a review of judgment, on the ground that he was absent on a pilgrimage, and the decree was consequently *exparte* in respect to him; that he had become surety for a specific amount, and had deposited security to that amount, and, therefore, was not responsible for more; and that in several other suits, of a like nature, the surety had been held liable only to the amount of his security, and which decisions had not been appealed from by the salt agent.

The review was granted and the case retried and decided by the principal sudder ameen in favor of respondent, rendering him liable only to the amount of his security.

The salt agent appealed, and it was contended on his part, that the respondent had bound himself by his bond to answer for his principal to an unlimited amount, and consequently was responsible for the whole of the defalcation, and urged that the words "bundug rukeea," or mortgaged with respect to the deposit in the bond, shewed that it should be considered as a mortgage bond and interpreted accordingly.

On the part of the respondent it was contended that the surety went security for a specified sum; that such was his intention in making the deposit; and that the same was understood by the salt agent, evidenced by his calling upon his principal to produce security for five thousand rupees more, the sureties he had brought having been rejected.

JUDGMENT.

There can be no doubt that the transaction in question was purely one of principal and surety, the words *zamin*, *surety*, *maatuburree* or security, and *amanut* or deposit, frequently occurring in the bond, and its entire contents purporting the same—therefore the mere word *bundug* or pledge occurring therein cannot alter its nature and of the transaction. The main point for consideration is the intent of the parties and the meaning of the bond. The salt agent required security to the amount of 10,000 Company's rupees from the respondent's principal, and respondent consented to become surety to the extent of 5,000 Company's rupees, and was accepted, and deposited security to that amount: so far all is clear, distinct and specified. In like manner, the recital in the bond: but then comes a condition inserted in it, general, vague, indeterminate and indefinite, binding the surety to an amount unknown and unlimited. With regard to the intent of the parties there can be little doubt as their actions declare it; being clear, determinate and specified. With respect to the meaning of the bond the simple question is, shall that which is general, indeterminate and vague, prevail over what is clear, definite and indubitable? I have no hesitation in deciding in favor of the latter as correct, just, and equitable. It is true that the surety should have taken care to have inserted in addition to the general condition the restrictive words "to the extent of my deposit;" but, on the other hand, it was equally incumbent on the appellant to have inserted the clear explanatory words "over and above my deposit." A like omission I find is prevalent in taking and becoming security, to stop or enforce decrees appealed under Section 11, Regulation XIII. 1808, which occasions much ambiguity, and in many cases excessive severity and misery. The Court therefore confirm the decision of the principal *sudder ameen* given in accordance with the precedent filed before him by respondent,—a decision of the *Sudder Dewanny* in the case of the Salt Agent of 24-Pergunnahs *versus* Chunder Seckhur Roy and others, adjudged on the 27th January 1840, *Sudder Dewanny Adawlut Reports*, vol. VI. part 5, page 279. The case is precisely in point, though the printed report is very defective, nay incorrect, for the judges expressly directed that the sureties should be responsible only to the amount that they had specifically become security and pledged their property.

Appeal dismissed with full costs.

THE 21ST NOVEMBER 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 41 OF 1843.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Zillah Midnapore, Ram Mohun Raee.*

SALT AGENT OF TUMLOOK, APPELLANT, (PLAINTIFF,)

versus

MUDUN MOHUN MITR, RESPONDENT, (DEFENDANT.)

*Pleders—Purshun Koomar Takoor for Appellant—Neel Munnee
Banoorjeeah, Mr. Waller, and Mr. Sevestre for Respondent.*

SUIT laid at Company's rupees 12,698, 12 annas and 6 pie, embezzlement and wastage of salt of Gola No. 8.

CASE No. 42 OF 1843.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Zillah Midnapore, Ram Mohun Raee.*

SALT AGENT OF TUMLOOK, APPELLANT, (PLAINTIFF,)

versus

MUDUN MOHUN MITR, RESPONDENT, (DEFENDANT.)

*Pleders—Purshun Koomar Takoor for Appellant—Neel Munnee
Banoorjeeah, Mr. Waller, and Mr. Sevestre for Respondent.*

SUIT laid at Company's rupees 13,150, 11 annas, 0 pie, embezzlement and wastage of salt of Gola No. 14.

CASE No. 43 OF 1843.

*Regular Appeal from the decision of the Principal Sudder Ameen of
Zillah Midnapore, Ram Mohun Raee.*

SALT AGENT OF TUMLOOK, APPELLANT, (PLAINTIFF,)

versus

MUDUN MOHUN MITR, RESPONDENT (DEFENDANT.)

*Pleders—Purshun Koomar Takoor for Appellant—Neel Munnee
Banoorjeeah, Mr. Waller and Mr. Sevestre for Respondent.*

SUIT laid at Company's rupees 7,077, 0 annas, 2 pie, embezzlement and wastage of salt.

CASE No. 44 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen of Zillah Midnapore, Ram Mohun Race.

SALT AGENT OF TUMLOOK, APPELLANT, (PLAINTIFF,)

versus

MUDUN MOHUN MITR, RESPONDENT, (DEFENDANT.)

Pledgers—Purshun Koomar Takoor for Appellant—Neel Munnee Banoorjeeah, Mr. Waller and Mr. Sevestre for Respondent.

SUIT laid at Company's rupees 5,523, 4 annas, 0 pie, embezzlement and wastage of salt of Gola No. 6.

JUDGMENT.

The parties in these cases being the same, and the claims founded on the very same document as in No. 40, decisions are passed in accordance with the judgment given in that case. Appeals dismissed with full costs.

THE 20TH NOVEMBER 1845.

PRESENT:

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 194 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Jessore.

TEELOKE CHUNDER HOLDAR, PAUPER, APPELLANT,
(PLAINTIFF,)

versus

DWARKANATH BOSE, AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

THE plaintiff claims the reversal of a sale held in satisfaction of a summary decree against him, and to obtain possession of the thing sold, viz. some gantee land in turf Mihulpore and Syedpore.

The principal sudder ameen dismissed the claim on the following grounds: that the circumstance of the sale taking place on the 1st January does not invalidate the sale; that there is no proof of *bonafide* purchase as affirmed by the plaintiff, and that the other objection to the legality of the sale raised by plaintiff, that due

notice was not issued previous to the sale, is not borne out by the record. On the 10th May 1844, the plaintiff appealed to this Court, resting his appeal on the points below noted :

1. That the sale took place on the 1st January which was a holiday, when the courts of justice were shut, and the collector was not competent to sell on such a day.

2. That the *benamee* purchase is proved by the payment of the money by defendant.

3. That from the evidence adduced it would appear the notice was not served in the mofussil, though reported as served by the collector's nazir.

OPINION.

I am unable to find in the printed or other Circular Orders any authority for considering the 1st January 1836 a close holiday. The vakeels of the appellant are also unable to point out any such authority. To contest their statement as to the custom of shutting the courts on that day, the respondents produce decrees of the zillah court of Jessore recorded on that day in 1836, as well as proceedings of the criminal court of the same zillah. That the collector's office was not shut, is sufficiently plain from the occurrence of this sale. The custom cannot therefore be pleaded as a local one. I find that on the 19th November 1839 the Board of Revenue prohibited sales in satisfaction of decrees on the days on which the courts of justice are closed ; and among those enumerated in the list referred to is the 1st January ; but this order is subsequent to the date of the sale in question, and distinctly shews that the practice of holding such sales on that day did exist before the issue of it. I do not therefore admit the validity of this objection.

The *benamee* purchase by the defendants is not established to my satisfaction, and would not invalidate the sale if proved. They appear to have been quite competent to bid in their own name openly.

Regarding the issue of notice in the mofussil, which plaintiff contests, I observe that Regulation VIII. 1835, under which this sale took place, does not require the issue of any notice in the mofussil. Notice merely of ten days in the civil court and collector's office is there mentioned as requisite. The collector states, after special enquiry on this point, that such notices were duly issued. It would be more satisfactory were there a receipt of the court ; but such receipts were not always taken, and the want of such a receipt is not alone sufficient to invalidate the sale. The whole of the grounds, on which the plaintiff rests his appeal from the decision of the principal sudder ameen, having been examined and proved insufficient to affect the validity of the sale, or the correctness of that decision, the order passed by the principal sudder ameen is hereby confirmed, with costs.

THE 20TH NOVEMBER 1845.

PRESENT:

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 254 OF 1844.

*Regular Appeal from the decision of the Principal Sudder
Ameen of Purneah.*

KERIT SING, APPELLANT, (PLAINTIFF,)

versus

RAJINDERNARAIN RAI, RESPONDENT, (DEFENDANT.)

THE plaintiff claims 7,421 rupees under a bond and kistbundee executed by Rancee Nelawuttee, deceased; the defendant, Rajinder-narain Rai, being her adopted son and in possession of the property left by her. In support of the claim, he files the original kistbundee, and an ikramameh on the part of Sohun Lol, to whom it appears this kistbundee was made payable by the plaintiff. Sohun Lol brought an action under the kistbundee, No. 39 of 1842, but the principal sudder ameen dismissed the claim. The ikramameh now filed is intended to prove that Sohun Lol has given up his claim under the kistbundee, and that the plaintiff is entitled to sue under it.

On the 24th June 1844, the principal sudder ameen, having called on the plaintiff to prove the two documents above mentioned, gave his opinion that they were not proved to his satisfaction; that both parties to the kistbundee had been sometime dead, and that Sohun Lol, by whom the ikramameh was said to be written, was also dead. Referring also to the former decision, on the claim of Sohun Lol under the same kistbundee, decided on the 21st July 1842, he considered that the plaintiff's present claim was not proved, and dismissed it accordingly.

On the 20th September 1844, the plaintiff appealed to this Court, resting his appeal mainly on the inconsistency of the principal sudder ameen's decision with that formerly given in the case of Sohun Lol.

OPINION.

This is a claim under the kistbundee, which was not produced on occasion of the former suit of Sohun Lol; it is now filed, but no witness has been called to prove it. It is evident that a mere unproved document like this cannot be admitted as sufficient to substantiate a claim. There is, therefore, nothing before the Court to prove that any sum is due on this kistbundee; the necessity of proving which is the greater, because both parties to it are dead, and because it was stated to have been lost when the claim under it was last advanced. Again, were the kistbundee proved, it is extremely doubtful whether plaintiff could claim under it; his own

witnesses prove that the plaintiff sold this kistbundee to Sohun Lol, for a sum of money which plaintiff was indebted to Sohun Lol: he had consequently received the price of it. Now after Sohun Lol's death, plaintiff produces an ikrarnameli said to be written at the same time as the document transferring the kistbundee, and declaring that transfer null and void. The evidence adduced to prove this ikrarnameli is by no means satisfactory.

On the whole, I see no reason to interfere with the decision of the principal sudder ameen, which is hereby confirmed.

THE 25TH NOVEMBER 1845.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 19 OF 1845.

IN the matter of the petition of Dookeeram Ghose, and others, filed in this Court on the 8th January 1845, praying for the admission of a special appeal from the decision of the judge of Midnapore, under date the 9th December 1844, dismissing, on default, an appeal preferred by the petitioners from the decision of the moonsiff of Bogree, dated 15th August 1844, in the case of Seetaram Chuckerbutty, and another, plaintiffs, *versus* petitioners, defendants.

It is hereby certified that the said application is granted on the following grounds.

In this case the petition of appeal was filed in the judge's court on the 17th September 1844, and rejected by the judge because not filed within thirty days from the date of the moonsiff's decision, the 15th August 1844.

The petitioners urge that they received the moonsiff's decision on the 20th August 1844; and that, under clause 1, Section 46, Regulation XXIII. of 1814, they are entitled to 30 days from that date to lodge an appeal, and having done so on the 17th September 1844, they were within time.

The objection is good; and the question was so ruled in the Circular Order of the 11th June last, No. 24, issued to the several civil judges.

The special appeal is therefore admitted; and as a summary appeal, on a stamp paper of two rupees value, would have been sufficient in this case, the difference between that sum and the value of the stamp [eight rupees] on which this application for a special appeal has been engrossed, will be refunded to the petitioners; and the judge's order being reversed, he will be instructed to receive the petitioner's appeal, and to dispose of it under the general regulations.

THE 25TH NOVEMBER 1845.

PRESENT:

C. TUCKER,

JUDGE.

PETITION No. 20 OF 1845.

IN the matter of the petition of Dookeeram Ghose, filed in this Court on the 8th January 1845, praying for the admission of a special appeal from the decision of the judge of Midnapore, under date the 9th December 1844, dismissing, on default, an appeal preferred by the petitioner from the decision of the moonsiff of Bogree, dated the 15th August 1844, in the case of Seetaram Chuckerbutty, and another, plaintiffs, *versus* petitioner, defendant.

It is hereby certified that the said application is granted on the following grounds :

In this case the petition of appeal was filed in the judge's court on the 17th September 1844, and rejected by the judge because not filed within thirty days from the date of the moonsiff's decision, —the 15th August 1844.

The petitioner urges that he received the moonsiff's decision on the 20th August 1844, and that, under clause 1, Section 46, Regulation XXIII. of 1814, he is entitled to thirty days from that date to lodge an appeal :—and having done so on the 17th September 1844, he was within time.

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The special appeal is therefore admitted ; and as a summary appeal, on a stamp paper of two rupees value, would have been sufficient in this case, the difference between that sum and the value of the stamp [eight rupees] on which this application for a special appeal has been engrossed, will be refunded to the petitioner : and the judge's order being reversed, he will be instructed to receive the petitioner's appeal, and to dispose of it under the general regulations.

THE 25TH NOVEMBER 1845.

PRESENT:

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 285 OF 1841.

A regular Appeal from the decision of the Principal Sudder Ameen of Backergunge.

BUDROO F. REBELHO, AND OTHERS, HEIRS OF DR. CLEMENT,
DECEASED, APPELLANTS, (PLAINTIFFS,)

versus

BUDROO DESILVA, AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

GOVERNMENT AND ISSURCHUNDER MOOKERJEE,
OOZERDARS.

THIS is a claim for 30 droons of land, according to boundaries laid down in the plaint, in Joar Rugonathipore Sohuree, with mesne proceeds from 1215 to 1246. It seems that there was a boundary dispute between the plaintiffs and defendants, on which an order was passed in the zillah court under date the 15th May 1815: in this decree the boundary to the west of plaintiffs' land was fixed, viz. the Khal Bhuranee Fakeer. The plaintiffs allege that defendants are in possession of the land claimed on the plaintiffs' side of the said khal. The point in dispute is simply, which is the Khal Bhuranee Fakeer, the acknowledged boundary of the land of the litigants,—plaintiffs pointing out one khal and defendants another.

On the 18th August 1841, the principal sudder ameer of Backergunge dismissed the claim, with reference to the former decision of the civil court, and the orders passed in execution of it; he also gave his opinion that those former orders were correct, and the land claimed was not the rightful property of plaintiffs.

On the 18th November 1841 the plaintiffs appealed to this Court.

OPINION.

The decision of the Sudder Dewany Adawlut, No. 1880, dated 30th August 1821, clearly decided the boundary of the estates of the parties, declaring that the Khal Bhuranee Fakeer is the boundary between Joar Sohuree, plaintiffs' estate, and Sela Bonea, defendants' property;—this was the final judicial award in appeal from the zillah court and court of appeal, and cannot now be

questioned. In execution of that decree ameens were several times sent to give possession, and they did give possession according to the decree, and determined that the Khal Bhurancee Fakeer was the khal pointed out by the defendants in this case. The plaintiffs even then disputed the point, but the zillah court and court of appeal, as well as the Sudder Dewanny Adawlut, approved and confirmed the ameen's proceedings; and, in fact, decided that the khal in dispute was that pointed out by the defendants. The last order I find on the point, is the proceeding of the Sudder Dewanny Adawlut, dated 4th December 1828, on which plaintiff lays stress as giving him permission to bring the present suit. The terms of that order, are these: after confirming the order passed in the inferior court, and approving it, it adds, "if the respondent (the present plaintiff) considers himself aggrieved he may bring a regular suit." Under this order the suit is brought; but the plaintiff is in error, in supposing himself thereby authorised to question any point already mooted and settled in the former case. I find it ruled in Construction, No. 1129, 9th February 1838, that any order passed in execution of a decree, regarding a matter in dispute between the parties to the suit and involved in the decision, must be looked on as a necessary process for carrying into effect the original intention of the court passing the decree, and cannot constitute a new cause of action. In the present case the point in dispute is, which of the two khals is Khal Bhurancee Fakeer; now this very point was decided by the former order of 1828 in execution of the decree of 1821, and cannot therefore now be questioned. The expression used in the order of the Sudder Dewanny Adawlut, referred to by plaintiff, was not intended to give any special leave to bring a new suit to contest any point already disposed of. The plaintiff moreover did not avail himself of this permission for a long period, that order being dated 1828 and the suit brought in 1840 although within 12 years.

The main point upon which plaintiff's claim hinges having been thus already finally disposed of, it is unnecessary to go further into the case; the order of the principal sudder ameen is therefore confirmed with costs.

THE 25TH NOVEMBER 1845.

PRESENT:
C. TUCKER,
JUDGE.

PETITION No. 597 OF 1845.

IN the matter of the petition of Joymarain Bose, filed in this Court on the 19th September 1845, praying for the admission of a special appeal from the decision of Syed Osman Ali, additional principal sudder ameen of zillah 24-Pergunnahs, under date the 10th September 1845, reversing that of Tara Chand Deb, moonsiff of Russa, under date 8th May 1845, in the case of Gholam Imam and Fuzzul-ul Rulman, plaintiffs, *versus* petitioner and Gooroo Churn Dutt, defendants.

It is hereby certified that the said application is granted on the following grounds.

The petitioner, having purchased, at a public sale made for the recovery of arrears of Government revenue, the estate in which the plaintiffs held an under-tenure; and not being able to obtain any of the former accounts, showing the amount jumma of the cultivators, under-tenants, &c., had recourse to a measurement of the estate, and then issued notices under Section 9, Regulation V. 1812, containing the specific jumma that would be demandable for the then current Bengal year.

The plaintiffs at once instituted the present suit in the civil court, denying the petitioner's right to enhance their jumma, and praying that the notice might be declared null and void.

The case was first heard by the moonsiff of Russa, who, without entering into the merits of the question, dismissed the claim, stating that the petitioner, the defendant, as purchaser at public sale made for the recovery of arrears of Government revenue, was competent to issue such notice. On appeal the additional principal sudder ameen reversed the decision of the moonsiff, on the ground that the notice issued did not express the amount in which the present jumma exceeded the former jumma.

The notice directed by Section 9, Regulation V, 1812, should indicate the *specific rent* fixed on the land, but I find no mention made therein of any necessity to specify the extent of the enhancement. The notice does declare the specific rent to which the plaintiffs would be subject, viz. Company's rupees 65, 0 annas, 12 ¹/₂. I therefore admit this special appeal, and quash both the decisions of the lower courts; and direct that the proceedings be returned, with instructions that the moonsiff be required to replace the suit on his file under its original number, and decide the same on its merits, as well with respect to the plaintiffs' claim to hold at a fixed jumma, as to the propriety of the rent fixed by the new proprietor of the estate, should his right to enhance the rent be established.

THE 26TH NOVEMBER 1845.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 48 OF 1844.

*Regular Appeal from a decree passed by the Principal Sudder Ameen
of Shikhabad, Munoor Ali Khan, January 26th, 1843.*

HURREE CHURN AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

BHUGGUT RAE AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

THIS suit was instituted by appellants, on the 6th October 1811, to recover from respondents 236 biggahs, 10 beeswahs, 19 dhooors of land, situated in mouzah Nuwâda-bén; and half a tank known as 'Tulab Koondwa'; with wasilât (or mesne profits) on the land, for the year 1248 Fuslee: the whole estimated at rupees 5,232-13-6.

Appellants are proprietors of the estate of Nuwâda-bén,—respondents, of that of Musarh. The contested land is a strip, running north and south, between these; and the tank claimed is on the eastern edge of this strip, a portion of it lying within the acknowledged limit of Musarh, in that direction. The object of appellants, is, to get the eastern edge of this strip of land fixed as the eastern boundary of their estate (Nuwâda-bén); respondents claiming the whole, to its western edge, as the western boundary of Musarh.

Premising as above, the plaint proceeds to state, that the tank (Koondwa) has continued as represented for generations past, and has been used throughout the period, by the proprietors of both estates respectively, for the purpose of irrigation. In 1238 F. however appellants were opposed by respondents, and water refused. This led to a complaint in the criminal court; whence, on the 3d August 1833, an order was obtained supporting appellants' privilege of irrigation; the party dissatisfied being referred to the civil court, to substantiate his claim to an independent right to the tank in question. This order was affirmed, in appeal, by the commissioner. In 1834, disputes again called for the interference of the magistrate; and recognizances, involving a penalty of rs. 200, were taken from both parties to keep the peace towards each other.

In the course of the same year, respondents again brought matters before the criminal court; by which the same order was repeated which had been passed in 1833. In appeal to the commissioner, however, that authority observed, that the order of 1833 related merely to the right of irrigation from the Koondwa tank, but that the boundary line between the two estates was now contested; and this the magistrate was directed to take measures for determining. Upon this the joint magistrate proceeded to the spot, and fixed a line of division; which gave to respondents the entire tank, and the whole of the disputed land, which had been for so many years past held by appellants. They appealed to the magistrate against this proceeding; but after a personal enquiry and inspection of the boundary proposed by the joint magistrate, he confirmed the same; leaving to appellants, as their only remedy, the action now brought in the civil court.

In answer to this, respondents maintain, that the true boundary has always been that determined to be so, by the magistrate and joint magistrate; and besides other evidence on which the question was decided, they refer to an inscription on an image of Parus Nāth, in a temple standing on the land asserted by appellants to be theirs. This inscription distinctly states, that the image is enshrined within the village of Musarh (the hereditary estate of respondents.)

The principal sudder ameen deputed a person to measure the contested land, and to determine the boundary on the spot. The result of this was an arbitrary division of the strip before described, into thirteen sections by parallel lines drawn east and west, from the northern to the southern extremity of the whole. These sections are numbered 1 to 13 beginning at the northern end; and of these, Nos. 3 and 8 to 13 inclusive, are adjudged to appellants, the remaining six to respondents. The principal sudder ameen adopted this division; decreeing to appellants the above sections, comprehending ground to the extent of 267 biggahs, 5 beeswehs and 19 dhooors; with wasilat for the Fuslee year 1248 on the same.

After a careful consideration of the facts and circumstances exhibited in this case, and due weight being allowed to the conflicting evidence in the various stages of enquiry, which the proceedings contain, the Court observe, that it is impossible to admit the boundary line determined in the lower court, which is palpably incorrect on the very face of it. They regard that fixed by the joint magistrate on the 29th September 1840, approved and confirmed by the magistrate on the 5th July 1841, as not open to the objections which have been urged against it, and, reversing the decree of the principal sudder ameen, they determine the line so fixed and approved by the magistrate and joint magistrate, to be the dividing line respectively of the two estates. To prevent future misconception and dispute, the line thus determined is hereby defined as following the course of a raised ridge ('dundar') as existing in 1840-1, com-

mening at the Gungee Nuddee on the north-west, and passing to the westward of the Koondwa tank, thence along the western side of the Koondlee tank, and the eastern side of the Deegha tank, to Teen Koondwa (the extreme southern point of the land contested.)

The right of appellants to water for irrigation, from the Koondwa tank, having been already established by a judicial award, the Court do not deem it necessary to do more than advert to the fact.

All costs payable by appellants.

THE 26TH NOVEMBER 1845.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 262 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen of Jessore.

GOOLABOODEEN BISWAS, (ONE OF THE DEFENDANTS),
APPELLANT,

versus

MESSRS. HILLS, WHITE AND CO. (PLAINTIFFS,) RESPONDENTS.

Messrs. Hills, White, and Co., the proprietors of the factory of Beer Kishenpoor, in zillah Jessore, instituted this suit, to recover, from Goolaboodeen Biswas, Khoda Buksh Biswas, Dhone Biswas, Ameer Biswas and Juscemoodeen Biswas, the proprietors of a neighbouring factory, Soonderpoor, and about 90 others, 8,114 rupees, the produce of certain indigo lands. They pleaded that Goolaboodeen, and the other proprietors of the Soonderpoor factory, had, on the 5th Bhadoon 1247 (19th August 1840) and the following 12 or 14 days, in conjunction with the other defendants, cut and carried off the indigo of 353 beegahs of land belonging to the subordinate factories of Khalispoor and Bulaipoor.

285 beegahs of dadance land, for which the ryot was to deliver indigo plant.

40 beegahs of nij-jote, cultivated by the plaintiffs.

28 beegahs of chooktee or poorun abadee, for which a certain quantity of manufactured indigo was to be given.

353 beegahs.

They therefore sued for the value of the crop: 353 beegahs producing 20 bundles per beegah, or 7,060 bundles, which, at $5\frac{1}{2}$ maunds of manufactured indigo per 1,000 bundles, would give 38 maunds $33\frac{1}{4}$ seers of indigo at 225 rupees per maund = 8737-0-0 deducting costs of manufacture 623-0-0 = 8114-0-0.

The defendants Goolaboodeen, and the other proprietors of the Soonderpoor factory, denied having cut the plaintiffs' plant, and pleaded that the plaintiffs on the contrary had carried off the indigo from 275 beegahs of their land, for the recovery of which they had brought a suit in the civil court, and that the present action was brought as a cross suit.

The 2d principal sudder ameen of Jessore, Mooltee Lootf Hossyn Khan, on the 11th July 1842, dismissed the claim of the plaintiffs to the crops of the dadance and chooktee abadee lands: to the dadance lands because the plaintiffs had not sued the ryots who cultivated the lands on receiving advances; with permission to sue them and the defendants separately; to the chooktee abadee, because the plaintiffs, claiming manufactured produce, had no lien on the land. He deemed it proved by the evidence of the witnesses of the plaintiffs, that the defendant did carry off the crop of the 40 beegahs of nij-jote land, and that the produce was 20 bundles per beegah. He therefore decreed (40 beegahs \times 20 bundles = 800 bundles, producing 1 maund from 200 bundles or 4 maunds of manufactured indigo at 225 rupees per maund) 900 rupees to be paid by the defendants, Goolaboodeen and his partners.

Goolaboodeen appealed from that part of the decision which made the defendants liable for 900 rupees. Messrs. Hills, White & Co. in their reply objected to that portion of the decision which rejected their claim to the produce of the dadance and chooktee abadee lands.

The Court confirm that portion of the decision which rejects the claim to the produce of the dadance and chooktee abadee lands. In regard to the nij-jote lands, as the appellant has not produced any evidence to refute that brought forward by the respondents, which establishes their claim, the Court do not see reason to interfere with the decision of the principal sudder ameen, further than to direct that the costs of manufacturing be deducted from the value of the indigo, viz. 900 rupees, at the rate claimed by the respondents in the plaint. Costs will be allowed to the respondent in proportion to the amount confirmed in appeal.

THE 26TH NOVEMBER 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 787 OF 1844.

IN the matter of the petition of Wasifoodeen, filed in this Court on the 28th September 1844, praying for the admission of a special appeal from the decision of the judge of Jessore, under date the 12th July 1844, reversing that of the sudder ameen of Jessore, under date 28th December 1843, in the case of Mussumat Reshum, plaintiff, *versus* Wasifoodeen, defendant.

It is hereby certified that the said application is granted on the following grounds.

Plaintiff's house was searched by the defendant, a police darogah, and she was sentenced to 18 months' imprisonment as a receiver of plundered property. On her release she applied to the magistrate for such property as was produced from her house, giving in a list of 90 articles, and charging the darogah with having made away with the greater part of it. Her plaint was rejected, and in appeal to the session judge that order was confirmed.

She in consequence, brought this action in the civil court, estimating her loss at 421 rupees, 5 annas. Her suit was dismissed by the sudder ameen, on the ground that, although she had preferred sundry charges against the darogah, in her reply to the magistrate, that of making away with her property was not one, and that no evidence was brought forward which went to shew that any property, save that included in the chullan sent in with the darogah's report, was produced on search of plaintiff's house by the police.

The judge, in appeal, was of opinion that "the exact quantity of property, or its value, could not be determined; but he thought the jury had estimated it too low, and decreed 150 rupees as the value of the property, with interest from date of the sudder ameen's decision."

The judge should have recorded the data on which he awarded 150 rupees, and have assigned reasons for adjudging to the plaintiff a sum in excess of that awarded by the jury. I admit a special appeal; and direct the case be brought on the regular file, and returned to the judge, who should be instructed to retry the appeal; and, in recording his decision, he must give his opinion in detail as required by Act XII. 1843.

The English and vernacular proceedings vary materially.

THE 27TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 200 OF 1841.

*A regular Appeal from the decision of the Principal Sudder
Ameen of Midnapore.*

RAJA MUN-MOHUN SINGH, APPELLANT, (PLAINTIFF,)

versus

THE COLLECTOR OF MIDNAPORE, JUGUT CHUNDER
MOKERJEE, PRAN CHUNDER MOKERJEE, MOHESII
CHUNDER MOKERJEE, HURISH CHUNDER MOKER-
JEE, FOR SELF AND MAN CHUNDER MOKERJEE AND
KALEE CHUNDER MOKERJEE, MINOR SONS OF SAN-
TOO CHUNDER MOKERJEE, DECEASED, HEIRS OF
SUMBOO CHUNDER MOKERJEE, ZUMEENDAR OF PER-
GUNNAH BOGREE, KUMLA KUNTH CHOWDRY, THEIR
NAIB, AND MESSRS. JOHN AND ROBERT WATSON, PUT-
NEEDARS, RESPONDENTS, (DEFENDANTS.)

Raja Mun-Mohun Sing, grandson of Raja Chutter Singh, for-
merly raja and zumeendar of pergunnah Bogree, instituted this
suit, on the 15th March 1839, against the defendants, to recover

* 1 Tank in Gohaltore, } containing }	5	Big. value	1000	possession of the rent free property detailed in the margin,* valued, with mesne profits, at Company's rupees 7365, 5 annas, 1½ pie. The plaintiff claims the property under a <i>fusul char</i> , or deed of release, granted by Mr. Thomas Short, the Collector of Midnapore in 1191 Unlee. He states that Raja Chutter Singh, his maternal grand father, had lost his estate, with the exception of Turuf Beyla, in consequence of his being implicated in the Chooaree disturbances; and that Turuff Beyla was attached in 1224 Umlee, and Chutter Singh subsequently
1 ——— Huripoor, ... }	10	„	1000	
1 ——— Phoolburia, .. }	4	„	700	
1 ——— Jadubnagar, .. }	4	„	500	
1 Bund in Hoomghur, .. }	21	„	500	
1 ——— Enchul Kona, ... }	10	„	200	
2 Mango and Jack Gardens in Ja- dubnagar, }	5	„	300	
1 Pucka Mundar or Temple in Gohal- tore dedicated to the Idol Radha Kaut Thakoor. ... }	15	„	300	
Ghurbaree or homestead in Mungulkota, .. }	300	„	1350	

resigned it, on receiving from Government 6,000 rupees; that Turuf Beyla had been settled with Sumboo Chunder Mokerjee, who had purchased pergunnah Bogree at auction; that Chutter Singh had possession of the contested property till, in 1227, while he was residing at Hooghly, under surveillance, Sumboo Chunder Mokerjee took possession thereof; that he was about to sue to recover possession thereof, when he died in 1232 Umlee, after having constituted the plaintiff his heir; that Government had recognized him as heir, but that he was referred to a regular suit; that he consequently did institute a suit in the provincial court of Calcutta, No. 20 of 1830, which was decreed in his favor on the 4th February 1833; that on appeal by Sumboo Chunder Mokerjee, the Sudder Dewanny Adawlut sent back the case for retrial after a reference to the collector under Section 30, Regulation II of 1819; that on the 25th November 1834, another decree was passed in his favor by Mr. A. Dick, judge of Midnapore; that Sumboo Chunder Mokerjee appealed to the Sudder Dewanny Adawlut and died, when the defendants, Jugut Chunder Mokerjee, and others, carried on the appeal; that on the 17th May 1838, Mr. Braddon was of opinion that the zillah judge's decision should be confirmed, but sent on the case for another voice; that on the 10th September 1838 Mr. Money recorded his opinion that the plaintiff ought to be nonsuited, because he had not sued the collector, and that Mr. Rattray concurring with Mr. Money the plaintiff was accordingly nonsuited on the 31st December 1838, and brought the present action on the 15th March 1839.

The collector of Midnapore stated that Raja Jadoo Singh, the father of Raja Chutter Singh, the zamcendar of pergunnah Bogree and Turuf Beyla, was confined and his estates confiscated; that Raja Chutter Sing was put in possession of Turuf Beyla, but, being implicated in the Chooaree disturbances, fled, and a proclamation issued for his apprehension on the 29th October 1783; that Mr. Short having ascertained that Raja Chutter Singh had not been actively employed in the insurrection, and that what he had done, he had been induced to do through fear of his father, recommended by his letter to Government, of 10th February 1784—22d Magh 1191 Umlee, that Turuf Beyla should be settled on him for the support of himself and his mother, on condition of their residing at Chuttergunge, and holding no communication with the rebels; that he by his letter of the 1st May 1784—22d Bysakh 1191 Umlee, reported that Chutter Singh had with his mother, delivered themselves up, and had been put in possession of Turuf Beyla; that during the second Chooaree disturbances, Chutter Singh resigned Turuf Beyla, by two ikrarnamchs, dated 13th May 1817—2d Jhyt 1234, on condition that he should receive from Government an annual pension of 6000 rupees, and that he should refrain from going to Bogree, but reside at Hooghly or Midnapore, or where

Government should direct; that Raja Chutter Singh enjoyed the pension during his life time, and the plaintiff, after his death, receives one moiety of the pension. Under these circumstances he pleaded that the plaintiff had no claim to any land in Bogree or Beyla. He denied the validity of the *fusul char* of Mr. Short, as that gentleman had no authority to grant such a deed.

Messrs. J. and R. Watson gave in answer to nearly the same purport. Budun Lal Agustee and Ramdeen Agustee put in a petition claiming the bund Uehul Kona.

The principal sudder ameen, Ram Mohun Rai, dismissed the claim on the 26th May 1841, deeming the proof of the plaintiff's right to hold the lands claimed, on a *lakheraj* tenure, defective.

On appeal to this Court, it was defended by the collector and the Messrs. Watsons, the *zumeendars* not appearing.

The Court, after consideration of all the circumstances of the case, are of opinion that the evidence adduced by the plaintiff, to prove that the property in question is separate from Turuf Beyla, is totally insufficient. The only direct documentary evidence adduced is, the *fusul char*, or deed of release, alleged to have been granted by Mr. Short, who, it appears from the Government records, had no authority to grant such a deed. It bears date 22d May 1784 or 12th Jhyt 1191 Umlee. By a letter from Mr. Short of the 1st May 1784, he informs the Government that on Raja Chutter Singh's making his appearance, he will put him in possession of the *jaghire* of Beyla granted to him by Government. The exact date on which he did deliver himself up does not appear; but it must have been before the 1st June following,—for, on that date, Mr. Short reports the fact. The Court cannot conceive it likely, or even possible, that while the country was in the state of anarchy described in Mr. Short's letter, that gentleman should have been able within so short a time to make the necessary enquiry into the validity of the rent free tenures claimed by Raja Chutter Singh, which is distinctly stated in the deed itself, to be the ground on which the deed was granted. The deed itself moreover in their opinion bears palpable marks of forgery.

They deem it indisputable that the lands in question were included in the *jaghire* of Beyla, granted, on his submission, to the plaintiff's ancestor Raja Chutter Singlr; inasmuch as the *jaghire* of Beyla was the only property bestowed on him by Government, after he had, by his rebellion, forfeited all his property, and it is not pleaded that he or his family have subsequently acquired by gift, purchase, or otherwise, any other property; and that consequently it was resigned by him, when he in 1817 resigned the *jaghire* in consideration of an annual pension of 6000 rupees.

Under these circumstances the Court reject the plaintiff's claim; and, dismissing the appeal, confirm the decision of the principal sudder ameen of Midnapore with costs.

THE 27TH NOVEMBER 1845.

PRESINT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. FARLOW,

TEMPORARY JUDGE.

CASE No. 49 OF 1844.

Special Appeal from a decision of the Principal Sudder Ameen of Shahabul, Munowur Ali Khan, passed May 17th 1843, affirming one passed by the Moonsiff of Buxar, Salamat Ali, September 11th 1842.

GOUR SUHAEE SINGH AND OTHERS, APPELLANTS,
(PLAINTIFFS,)

versus

NURUNJUN SINGH AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

THIS suit was instituted by appellants, on the 1st September 1841, to recover from respondents a twentieth share (exclusive of 63 biggahs 14 beeswehs) of talooq Buruhpore, with mesne profits for 1248 Fuslee.

The substance of the plaint, was, that appellants' ancestors, Duleel Singh and Ram Rooch Singh, had mortgaged the land claimed, for 275 rupees, to Deriao Singh, father of Nurunjun Singh, respondent, taking from him an ikrarnamah (or deed of agreement) dated 30th Sawun 1208 Fuslee (1801) by which redemption might be claimed up to the full moon of Sawun 1218 F. (1811) a period of 10 years. Juddoonauth Singh (a third party to the suit) and Sheonurain Singh having obtained a decree against Nurunjun Singh, an order issued from the court, in execution of it, intimating to the heirs of Ram Rooch Singh, that, unless they paid into court the money advanced by Deriao Singh, Nurunjun's father, on the occasion of the mortgage above mentioned, the property would be brought to sale. Muheesh Kowur, one of the appellants, paid in rupees 293-5-4, filing at the same time the ikrarnamah (under which the cowaleh became a conditional deed, and the transaction one of mortgage instead of sale) and praying that, the money being paid, an order might issue for possession of the land mortgaged. On the 23d December, 1840, the above sum was ordered to be returned to Muheesh Kowur, who was referred to a regular suit in the civil court against Nurunjun and the other respondents for redemption of the mortgage.

The answer by Nurunjun Singh, was, that the land had been held by his father Deriao Singh and by himself, through a long term of years as their own property in virtue of an out-and-out purchase; that it had frequently been advertised for sale in satisfaction of decrees of court against them, without any claim being preferred or objection urged by appellants, but that no sale had taken place in consequence of protests on the part of Gyanee Lal and others (mortgagees from him, Nurunjun;) that the ikrarnameh asserted to have been executed by his father Deriao Singh, was never so executed. It bears a date subsequent to that of the cowaleh, is on paper of an inferior stamp to that on which the cowaleh is written, and has not been registered, as the cowaleh has.

This answer was filed by Nurunjun Singh on the 3d January 1842. On the 14th April following, he presented a petition, stating, that, on reference to papers, he had found, that the transaction between his and appellant's forefathers was one of mortgage not of sale, and that the claim of appellants should be dealt with accordingly.

The moonsiff, viewing the case as originally one of sale; deeming the ikrarnameh a fraudulent fabrication; and the admission of Nurunjun as intended to give effect to the imposition; dismissed the suit.

The same line of argument as that adopted by the moonsiff in regard to the evidence of the case, was followed by the principal sudder ameen, who affirmed the moonsiff's decision. Towards the conclusion of his final proceeding however he had recorded, that possession of the lands claimed could not be adjudged to appellants, with reference to the unredeemed mortgage held by Gyanee Lal and others; and this after determining, immediately before, that the case was not one of mortgage, but of unconditional, unqualified sale.

With reference to this contradictory and apparently irreconcilable addition to what had just preceded, and to the false reasoning contained in the remark as applied to the question at issue, a special appeal was admitted by the Sudder Court; on a revisal of the whole proceedings by which, it became evident, that a clerical error in drawing up the decree of the principal sudder ameen had caused the confusion and miscomprehension which had occurred. The claim of Juddonath, the creditor of and decree-holder against Nurunjun Singh, is the point under examination in this part of the decree; and it is, now, manifest, that it was the claim of this individual, Juddoonath, and not that of the appellants, which was intended to be recorded as barred by that (intangible till satisfied by redemption) of Gyanee Lal.

The Court, concurring in the view taken of the case by the lower courts, affirm their dismissal of the claim; with costs throughout payable by appellants.

THE 29TH NOVEMBER 1845.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 623 OF 1844.

IN the matter of the petition of Hur Kishore Rae, filed in this Court on the 8th August 1844, praying for the admission of a special appeal from the decision of Mr. C. T. Davidson, judge of Mymensingh, under date the 9th May 1844, affirming that of Mr. C. Mackay, principal sudder ameen of Mymensingh, under date the 19th December 1843, in the case of Mr. J. P. Wise, plaintiff, *versus* Rubee Lochun Doss, defendant—Hurkishore Rae, third party.

The plaintiff sued Rubee Lochun Doss to foreclose a mortgage, laying the action at the amount of the mortgage money—Rubee Lochun declared himself to be the mere furzee of the petitioner and another, and petitioner intervened. The principal sudder ameen, without allowing the petitioner to defend the suit, decreed the foreclosure. The petitioner appealed to the judge who confirmed the decision. The petitioner pleads that the action was not properly laid at the sum entered in the mortgage bond, but should, under Construction 957, have been at the selling price; 2d, that he should have been made a defendant; 3d, that plaintiff had possession, therefore it was necessary to enquire whether the mortgage had not been cleared off by the produce.

OPINION OF MR. REID.

Had not the petitioner confessed that he and his partner had made over their property to Rubee Lochun to defraud creditors, I should have been disposed to have said they ought to have been made defendants, and that the case should be sent back to be tried with them; but I doubt whether a plea, originating in avowed fraud, can be listened to by the Court. I shall therefore reserve the case for a full sitting—I will then take their opinion on the other points.

OPINION OF MESSRS. TUCKER AND BARLOW.

After mature consideration Mr. Barlow and Mr. Tucker were of opinion that the nature of the transaction between Rubbee Lochun and the petitioner should be determined only on judicial enquiry, after admitting the petitioner to the privilege of a defendant, viz.

to defend the suit. They observe likewise that the petitioner declared himself to be in possession of the property, in which case it was incumbent on the plaintiff to have made him a defendant in the first instance. Mr. Barlow and Mr. Tucker therefore concur in quashing the proceedings of the lower courts, and direct that the case be restored to the file of the principal sudder ameen, and the petitioner admitted as joint defendant and the case retried in the usual manner.

Mr. Reid adhered to his original opinion, that owing to fraudulent transfer from petitioner to Rubbee Lochun, the former had no right to defend the suit.

THE 29TH NOVEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE,

PETITION No. 707 OF 1844.

IN the matter of the petition of Rajchunder Chowdry and others, filed in this Court on the 9th September 1844, praying for the admission of a special appeal from the decision of the judge of zillah Jessore, under date the 13th June 1844, reversing that of the sudder ameen of that district, under date 28th December 1843, in the case of Meer Ali Ashruf, plaintiff, *versus* Rajchunder Chowdry, and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

The plaintiff, Meer Ali Ushruf, sued to recover possession of a reach of the river Kulseadee, called Jamshapoor Bauk, by setting aside an order of the fouzdarree court under Act IV. 1840. The sudder ameen dismissed his claim; but the judge, being of opinion that the possession of the plaintiff had been fully proved, decreed that he should be restored to possession,—leaving the question of right to be tried in another suit. The Court observe that this was the very point which ought to have been decided in the civil court, and for which purpose the suit was brought. They therefore quash the decision of the judge; and direct that the appeal be restored to the file, and the point of right be decided on judicially.

THE 1ST DECEMBER 1845.

PRESENT :

W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 260 OF 1844.

*Regular Appeal from the decision of the Principal Sudder Amcen
of Mymensing.*

BHOWUN MAYE DEBBEA, APPELLANT, (DEFENDANT,)

CHUNDRA BULLEE DEBBEA, (DEFENDANT,)

AMAN SING, APPELLANT, (DEFENDANT,)

versus

RAS BEHAREE KOOUR, RESPONDENT, (PLAINTIFF.)

GOBIND CHUNDER OOVERDAR.

THIS suit was brought by Ras Beharee to obtain the price of grain of various kinds, stated by him to have been unlawfully carried away by Bhowanee Kishwur Acharj, late husband of defendant, from the khamar (threshing floor) of muhal Aseem, at that time in farm to plaintiff. The defendants denied the taking away; and added that the grain actually in the khamar of Aseem was much less in quantity than stated by plaintiff; and that it was sold and the proceeds paid to the other defendant, Aman Sing, who was a sharer in plaintiff's farm.

The principal sudder ameen, on the 4th July 1844, recorded his opinion that the witnesses' depositions and a rookah, or letter, from Bhowanee Kishwur Acharj of the 13th Poos 1244, filed in the case, and attested by two witnesses, sufficiently proved that the grain in question had been carried away by the defendant's husband, Bhowanee Kishwur Acharj; and that the decision of the former principal sudder ameen, of 8th September 1838, shewed that the said Bhowanee Kishwur had conducted himself in an oppressive manner towards the plaintiff Ras Beharee; that there was no sufficient proof that Aman Sing had a share in the grain in question: he therefore decreed the price of the grain without interest.

On the 3d October 1844, the defendant, Bhowun Maye, appealed to this Court, in case No. 282. Ras Beharee, plaintiff, also appealed, claiming the interest disallowed by the principal sudder ameen, and Aman Sing in case No. 274 appealed, claiming a share in the sum awarded to plaintiff, on the ground that he was a sharer in the farm. The three appeals were brought forward

together. The grounds of appeal of Bhowun Maye, No. 260, are much the same as those already recorded as the grounds of her defence.

OPINION.

It is admitted by both parties that the muhals Aseem and Puttolee were in farm, from 1241 to 1246 inclusive, to Ras Beharee and Aman Sing; and several witnesses, heard on the part of plaintiff, speak positively to the grain in question having been taken away from the khamar by the people of Bhowanee Kishwur Acharj. The letter of Bhowanee Kishwur also appears to bear out the plaintiff's statement that the grain was abstracted in 1243. The defendants file evidence, who assert that the grain was not so taken away; but that 1000 maunds rice, the only produce of the muhal, was attached, but afterwards sold, and the proceeds paid to Aman Sing in 1246. Some documents are produced in support of this statement. Defendants lay stress on the circumstance that two of the witnesses named by plaintiff, Sheochurn and Jyram Sing, deny the statement of plaintiff, and agree in the statement of defendant, adding, that plaintiff attempted to persuade them to give false evidence in his favor. It appears to me that these two witnesses have been tampered with by defendant; and I give no credit to their story. The evidence of plaintiff's other witnesses, and the exhibits filed by the plaintiff, appear to me sufficient to bear out his claim. The depositions of defendants' witnesses are not altogether inconsistent with those of plaintiff's; they speak to the attachment of the grain, and assert that it was sold, and the proceeds paid to Aman Sing in 1246. The quantity mentioned is much less than that mentioned in the plaint; and it is possible that such a sale and payment may have taken place, although the larger quantity was abstracted in 1243. As the defendants appear to have abstracted the accounts of the estate, the plaintiff had no opportunity of proving what the estate actually did produce; but there is nothing adduced to throw a doubt on the capability of the estate to produce the grain, &c., mentioned by plaintiff. On the whole, therefore, I think the claim established, and see no reason to alter the decision of the principal sudder ameen as regards the appellant, Bhowun Maye. Costs of appeal to be paid by appellants.

CASE No. 282 OF 1844.

Ras Beharee, appellant in this case, claims the interest disallowed by the principal sudder ameen. I do not think that he is entitled to interest. The thing taken was grain; and though, in some cases, interest on the value of property thus abstracted might be allowed, I do not think proper to award it in this case. Costs of appeal against Ras Beharee, plaintiff.

CASE No. 274 of 1844.

Aman Sing, appellant, claims a share in the price of grain awarded to Ras Beharee, as a sharer in the farm. It seems that Aman Sing has, in the whole of this transaction, sided with the defendants; and had it been required of plaintiff to sue jointly with Aman Sing, he could not have sued at all. There is no doubt that Aman Sing had some share in the farm; but there is no proof what was the extent of his share; and from the evidence adduced there is no reason to believe that he had any share in the grain in mubal Aseem which was carried away. The witnesses say that it belonged entirely to Ras Beharee, in consequence of a private arrangement between the two, Aman Sing having Patladee, and Ras Beharee, Aseem, as their respective shares. There is therefore no sufficient reason to award any portion of the claim to Aman Sing. If he has any claim to adjustment of accounts with his partner, Ras Beharee, he can of course sue for such an adjustment. Costs of appeal court to be paid by Aman Sing.

A copy of this decision to be placed with the record of cases Nos. 282 and 274.

THE 2D DECEMBER 1845.

PRESENT:

W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 160 OF 1843.

*Regular Appeal from the decision of the Principal Sudder Ameen of
Purnea.*

MUTTHOORANAUTH GHOSE, (PLAINTIFF,) APPELLANT,

versus

MAHARAJAH ROODER SING, AND OTHERS, (DEFENDANTS,)
RESPONDENTS.

THIS claim is for possession of 300 beegahs of land in Asruin Kulan, a lakheraj estate of the plaintiff, which he states to have been usurped by the defendant, who is zemeendar of the lands adjoining it. The title of plaintiff to hold all the lands of Asruin Kulan had been established in a former suit, No. 211 of 1834. These lands, as well as the whole of his inheritance, having been taken possession of by Dyanath Rai and Ramanath Rai, the plaintiff

sued for and obtained a decree for them as heir of Jykunt Rai, deceased. In the course of executing that decree, several disputes arose regarding the boundaries of the muhals which formed this inheritance; and, to adjust these, the plaintiff was referred to a regular suit. This suit has been brought under that order.

The defendants denied that the lands in question belonged to the estate of Asruin Kulan, or, consequently, to plaintiff; asserting that they formed portion of their zemeendaree estate.

On the 26th April 1843, the principal sudder ameen dismissed the claim, on the ground that the fact of the lands sued for belonging to Asruin Kulan was not established to his satisfaction.

On the 25th July 1843, the plaintiff appealed to this Court, alleging that the report of the ameen, sent by the principal sudder ameen, and the evidence of the witnesses taken by him on the spot, bore out his statement.

OPINION.

In this case it is not necessary for the plaintiff to prove the validity of his lakheraj tenure, as asserted by defendants. It would be sufficient to entitle him to a decree, if he could shew that the land in question formed part of the lakheraj estate Asruin Kulan at the time that estate was in possession of Jykunt Rai. The decision of the case, therefore, turns exclusively upon the evidence taken by the ameen on the spot; but it appears to me, that this evidence does not prove the plaintiff's right to the land. The claim advanced is for 300 beegahs; but the plaintiff could only point out 141 beegahs of it to the ameen; and, regarding the 141 beegahs actually found, there seems to me more reason to believe that it forms part of Mujhool, defendants' village, than of Asruin Kulan. It is at a considerable distance from the other lands of Asruin Kulan, and, apparently, separated from that village by other lands. It is very much nearer to Mujhool, and the other lands of that village are on two, if not three, sides of it. The disputed land too is represented as land rather newly formed from the river; whereas the lands of Asruin Kulan are allowed to be entirely of a permanent nature, not alluvial or subject to abrasion by changes of the river's course. I see no reason to interfere with the decision of the principal sudder ameen, which is hereby confirmed, with costs against the appellant.

THE 3RD DECEMBER 1845.

PRESENT :

J. F. M. REID and

A. DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 253 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen of
Zillah Backergunge, Race Chunder Seckur Chordhree.*

MEERTINJAY SHAH. AND OTHERS, (DEFENDANTS,)

APPELLANTS,

versus

BABOO GOPAL LAL TIJAKOOR, (PLAINTIFF,)

RESPONDENT.

*Pleaders—Mr. Colebrooke, Ram Prau and Bansee Bulun for Ap-
pellants ; Pursun Koomar and Ghoolam Sufdur for Respondent.*

THE plaintiff, respondent, in virtue of being the zumeendar by purchase at auction sale for arrears of revenue of 14 annas of the zumeendarce in which the talook in question is situated, sued to have it declared invalid, and his right admitted to relet the lands anew. The defendants, appellants, pleaded the right of istemrardars, or talookdars dependant, not liable to enhancement of rent, and also pleaded lapse of time as a bar to the suit.

Several under tenants of the talookdars, on alleged permanent tenures, denominated howaladars, likewise appeared, and opposed their respective claims to immunity.

The principal sudder ameen, deeming the defence set up untenable, decreed the talook invalid, and the right of plaintiff to make a new settlement, and he declared the right of Chundee Pershad Chukurbutee, who had purchased his howalas, or permanent tenures, from the defendants some months after this suit had been instituted, invalid, and liable to assessment anew.

The defendants appealed to this Court, as did Chundee Purshad, in a special case No. 260 of 1840.

JUDGMENT OF MESSRS. REID AND JACKSON.

The decision of this case was postponed by Messrs. Reid, Dick and Gordon, at a previous sitting to consider the question whether the claim of the zameendar to assess the tenure of the defendants was barred by the fact of his not having brought his action within 12 years, and the case was brought on again this day.

After mature deliberation, we are of opinion that the claim to assess being a perpetually recurring cause of action, cannot be barred by the lapse of time, and that therefore the plaintiff was justified in bringing this action.

In regard to the claim of the defendants to hold their tenure as a talook on a fixed rent, we concur with the principal sudder ameen in thinking that the evidence adduced by them is insufficient to bear out their assertion, that any such grant had ever been made to them.

We see no reason to interfere with the settlement made, and consequently dismiss the appeal, and confirm the decision of the principal sudder ameen. The costs on the appeal are charged to the appellants.

JUDGMENT OF MR. DICK.

I hold that the law of limitation does apply, as a bar to this suit, which is a claim not merely to assess land liable to variable rent, but to cancel a fixed rent tenure, a dependant talooq. Under Section 49, Regulation VIII. 1793, istemrardars (mookurreedars) described in Section 19, who have held their lands for more than 12 years at a fixed rent, are not liable to be assessed with any increase. The principle of the law of limitation and of prescription is, fundamentally, that if a right be not preferred within a certain period, it has been alienated, and foregone. If then the zameendar did not, within 12 years from the time of the decennial settlement, avail himself of his right to challenge the title of the istemrardar, it was foregone and lost. *A fortiori*, the successor of that zameendar, who stands exactly in the place he stood at the decennial settlement, has foregone his right, if he permit 12 years to elapse without preferring it. In the present case 25 years elapsed. Under Clause 2, Section 2, Regulation XIX. 1793, no claim to hold land exempt from the payment of revenue, which has been subjected to payment within 12 years from the date the claim is preferred, can be heard; and in justice, the converse of the proposition must hold good. Under Clause 4, Section 3, Regulation II. 1805, the legislature has enacted only two exceptions to the law of limitation, and this is not one. In this country, the elements of destruction of documentary proof are constant and numerous, and therefore the law of limitation should be strictly enforced here, if any where. The proof of having possessed the tenure at a fixed jumma 12 years previous to the decennial settlement, would have been easy, and equitably required,

had the claim to annul it been preferred when the law was enacted, and as the legislature doubtless contemplated. The pottah and receipts of rent paid during the previous 12 years would naturally have been at hand, and would at once have established the validity or otherwise of the tenure. Now it would be next to a miracle to have them to produce, after a lapse of nearly 50 years, and most unjust to expect it. I may further add, in equity, that if the law be not applied to such claim, a zumeendar has every inducement to hold back, until the land is brought into the highest state of cultivation, and then to pounce upon it, when the holder of the tenure is least able to oppose his claim; and thus be deprived of the labor and expenditure of generations! In like manner, an auction purchaser of a zumeendaree sold for arrears of revenue, cannot enhance the rent of tenures which have not been, and may not be proved liable to increase of assessment. Under Section 51, Regulation VIII. 1793, he has the right to increase the rent of the tenure "on proving that he is entitled to enhance by a special custom, or by the conditions of the tenure, or by the holder having paid abatements of the jumma." The *onus probandi*, therefore, clearly rests on him. Again, the right of the original proprietor is preserved to him by Regulation XI. 1822. The original proprietor had this right. If the original proprietor neglected to enforce his right within the period allowed by law, he lost it; so the auction purchaser, his *locum tenens*, with much greater justice, inasmuch as every succeeding period creates a stronger presumption in favor of the talooqdar, or under tenant, from his right not having been questioned during so long a period, and in equity from his means of defending his right becoming daily more and more diminished. A correct decision in this case is of the utmost importance. If the law of limitation of 12 years does not apply to claims of zumeendars to resume or enhance, so neither can the limitation of 60 years apply to Government claims to resume. But by Clause 2, Section 2, Regulation II. 1805, no claim of Government, whether for the assessment of land held exempt from the public revenue, i. e. to resume land not paying revenue, or for the recovery of arrears, or for any public right whatever can be heard, beyond the period of 60 years from and after the cause of action—consequently such a construction of the law, being a palpable contradiction, must be erroneous.

With respect to the validity of the tenure, I think excellent and sufficient proof to substantiate it has been produced. There are deeds of sale and purchase of a portion of the tenure bearing date 1222 B. Æ. or 1815 A. D. These incontestably prove the existence of the tenure at and before that time, 30 years ago! There is not a tittle of evidence, nay, not even a surmise, that the tenure was created between that time and the decennial settlement. But there are deeds, a marriage settlement, and one of allotment of property, in which the tenure is evidently mentioned, and which

prove its existence in 1178 B. Æ. The marriage settlement is open to no suspicion, having been filed in a court of law for another purpose, so far back as 1812 A. D. Thus I conceive, the appellants have proved the existence of their tenure upwards of 70 years ago, in a manner few can ever hope to do, by a purely fortuitous, though most unexceptionable piece of evidence. I would therefore decree the appeal and reverse the decision of the lower court.

THE 3RD DECEMBER 1845.

PRESENT :

J. F. M. REID and

A. DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 260 OF 1842.

*Regular Appeal from the decision of the Principal Sudder Ameen of
zillah Buckergunge.*

CHUNDEE PRUSHAD CHUKURBUTTEE, APPELLANT,

versus

BABOO GOPAL LAL THAKOOR, RESPONDENT.

JUDGMENT OF MESSRS. REID AND JACKSON.

THIS is an appeal from the same decision as No. 253 of 1842, this day decided, and must follow the same course. The appeal is therefore dismissed, and the decision of the principal sudder ameen confirmed, with costs.

JUDGMENT OF MR. DICK.

As this case is involved in that just decided, No. 253 of 1842, I have merely to refer to my judgment in that appeal.

THE 4TH DECEMBER 1845.

PRESENT :

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 226 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Dacca.

JUGERNATH DASS, APPELLANT, (DEFENDANT),

versus

KISHEN CHUNDER DASS, RESPONDENT,

(PLAINTIFF.)

THIS is a claim brought by Kishenchunder, to obtain a certain portion of the property left by his father, against his brother, the defendant. It appears that the disputes between the brothers was settled on a former occasion by arbitrators, and their award was duly enforced. A copy of the decision of the arbitrators is with the case. Plaintiff states that, under the award of the arbitrators, he is entitled to the property claimed, the suit being laid at 13,756-15-9-1. The defendant denied the right of the plaintiff to the property, houses, &c., claimed. On the 2d July 1844, the principal sudder ameen gave a decree in favor of plaintiff for 5,918-14, out of his claim, with proportionate costs. On the 17th August 1844, the defendant appealed against the order.

OPINION.

The case, as it comes before this Court, regards only the sum awarded to plaintiff by the principal sudder ameen. This consists of 4 items,

1	{	2929-1-18-1,.....	Principal,	{	On account of money lent to Mooneerooddeen and Imdad Ali.
		1796-14,	Interest,		
2	{	25.....	Principal,	{	On account of Gopal Mahub's bond.
		25.....	Interest,		
3	{	200.....	Principal,	{	On account of Kumlah Kunt Chuckerbutty's bond.
		200.....	Interest,		
4	{	200.....	Principal,	{	On account of Govind Chunder's bond.
		200.....	Interest,		

Regarding the 1st item, defendant admits that he lent the money and received it back again; but, contends, that it was from his own private fund, not from the joint concern. The other three

items defendant denies the receipt of: he admits they were included in plaintiff's share by the arbitrators, and that he was consequently entitled to the amount; that the business having been previously carried on by defendant, the bonds were drawn in defendant's name; but adds, that plaintiff had sued for and obtained the amount of these bonds, under defendant's name. The loan to Mooneerooddeen, he states, was not entered in the list of property filed before the arbitrators, because it was a separate private affair of his own.

In the first place, the award of the arbitrators distinctly specifies, that the division was to include both the joint and private business of the parties; and on this account a larger share was allotted to defendant, than he would otherwise be entitled to. The only things exempted from the division are streedhun, and jewels given by the father of the parties to each. The plea advanced by defendant, regarding the loan to Mooneerooddeen, is therefore inadmissible. Besides, if, as would appear, he had private transactions as well as the joint business, and the bonds and papers regarding both were drawn in the same name so as to be undistinguishable, it would be impossible to decide whether his claim to particular items is good or not: and probably, on this very account, the arbitrators included both together in their division. I agree with the principal sudder ameen in thinking the plea set up regarding the other three bonds, as unsupported by the evidence adduced. Chundernath Dutt certainly states that the money was paid to plaintiff's mother; but I have great suspicion with regard to the truth of his evidence. On the whole it appears to me that the principal sudder ameen's decision is a just one, and I see no reason to interfere with it. The appeal dismissed with costs.

THE 15TH DECEMBER 1845.

PRESENT:

A DICK,

JUDGE.

—
CASE No. 5 OF 1843.
—

*Regular Appeal from the decision of the Principal Sudder Ameen,
Ram Mohun Race, of Zillah Midnapore.*

RUNKOO MUNDUL, &C., PAUPERS, APPELLANTS,
(PLAINTIFFS,)

versus

RAM NARAIN MUNDUL, &C., RESPONDENTS,
(DEFENDANTS).

*Pleaders—Awuz Alee and Gour Huree Bannerjee for Appellants;
and Mohumud Huneef for Respondents.*

SUIT laid at Co.'s Rupees 51,840, 4 annas, 16 gundas, 3 cowries, for real and personal property left by Kookeyla Deyee, ancestor of both parties.

The appellants claim one half of the property left by Kookeyla Deyee, mother of their father, and of the father of the respondents. They state that before her death, she called to her, her two sons, and wrote a deed in 1208 B. *Æ.*, desiring them, and authorizing them to divide equally whatever she possessed, or might possess. She died in 1222 B. *Æ.*, and the respondents ousted their father from his share of both the real and personal property. That in 1223, arbitrators were appointed by both parties to settle their respective claims, and both their father and respondents' filed their complaint and answer and deeds before the arbitrators; but that several of the arbitrators dying, no decision was given, and appellant's father died in 1231 B. *Æ.* At length they sued.

The respondents answered that appellants' father in 1177, on marrying, left his parents and home, and took up residence with his father-in-law, after receiving his portion of parental property. That their father continued with his parents; and in time, he and the respondents purchased the real property in question. That Kookeyla Deyee had no property to leave, and that all the deeds are in the name of their father, or of his sons, and were purchased with their means, and denied *in toto* the appointment of arbitrators. The principal sudder ameen, for the reasons fully detailed in his decision, dismissed the claim of appellants as utterly untenable.

JUDGMENT.

The appellants have produced no proof that Kookeyla Deyee possessed, or left any of the property, for the half share of which they sue.

The deed she is alleged to have written in 1208 B. *Æ.*, and on which appellants found the suit, is not proved; and is besides unworthy of credit, having been quite unnecessary, as the mother had only those two sons.

The appellants have given no satisfactory reason for the delay in suing; and the appointment of arbitrators is proved by neither document nor witnesses. Had they been duly appointed, there must have been a deed to that purport, and appellants would have been able to state what proofs their father produced before them of his right.

The appeal is, therefore, dismissed, and the decision of the lower court confirmed.

THE 17TH DECEMBER 1845.

PRESENT:

J. F. M. REID and

A DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 190 OF 1844.

Regular Appeal from the decision of the 1st Principal Sudder Ameen of Jessore.

BHAIRUB CHUNDER AND OTHERS, APPELLANTS,
(DEFENDANTS,)

versus

NUNDCOMAR MUJMODAR AND OTHERS, RESPONDENTS,
(PLAINTIFFS.)

THE plaintiffs sue for a share of an estate by inheritance, and say in their plaint that they will sue for their share in remaining property hereafter.

Appellants, defendants, state that this is contrary to the circular order, 11th January 1839, and cite the case of Goordas, filed, in which plaintiff was nonsuited on this ground.

Respondents cite case of Bholanath Baboo, decided 20th June 1842. Mr Reid there says that such a case need not be nonsuited; but on plaintiff bringing another case, it will be considered whether

the other case will stand. But the circular order states that such a suit is illegal, and the precedent of Goordas is in favor of nonsuit. This suit was brought before the Sudder Dewanny Adawlut before, and sent back for retrial. But the defect in the plaint was not then brought to the Court's notice, as it is at present: the point was therefore not disposed of.

It is however plain that the plaintiffs have, in their own plaint, acknowledged that they have sued only for a part of their claim, and intend hereafter to sue for the remainder. Such a suit being irregular, under the circular order 11th January 1839, ordered therefore that the decision be reversed, and the case referred to the principal sudder ameen, with directions to call on the plaintiffs to file a supplemental plaint, including the remainder of the inheritance, and to decide the case in the usual course.

THE 17TH DECEMBER 1845.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 110 OF 1844.

*Special Appeal from the decision of the Principal Sudder Ameen of
Beerbhoom.*

ROBERT JACKSON, APPELLANT, (PLAINTIFF.)

versus

GOOROOCHURN AND OTHERS, RESPONDENTS, (DEFENDANTS.)

CLAIM 494 BEEGHAS EXCESS RENT PAID.

On the 7th June 1842, the sudder ameen decreed this case in favor of plaintiff. On the 14th July 1842, the defendants appealed to the judge, who, on the 26th December 1842, referred the case for decision to the principal sudder ameen, who, on the 19th June 1843, reversed the decision of the lower court and dismissed the claim of plaintiff.

On the 9th March 1844, Mr. Reid admitted a special appeal, on the ground that the appeal had been filed on the 14th July 1842, and the moojibut, or grounds of appeal, and security, not furnished

till 31st January 1843, the appellants had neglected to proceed more than six weeks, and it was necessary to decide whether the principal sudder ameen ought not, under Act XXIX. 1841, to have struck the case off his file.

The defendants, respondents of this Court, stated that the judge did not refer the case for trial to the principal sudder ameen till the 26th December, from which date, to the 31st January, less than six weeks elapsed, and contended that the principal sudder ameen could not have struck off the suit, the appellants not having neglected to proceed for six weeks.

The Court are of opinion that the appeal had been filed on the 14th July 1842, and the appellants having neglected for above six weeks from that date to file their moojibut, the appeal should have been struck off; and the circumstance, that the case was subsequently referred for trial to the principal sudder ameen by the judge, does not excuse the previous default of appellants. Ordered, therefore, that the decision of the principal sudder ameen be reversed, under the provisions of Act XXIX. 1841, the period for instituting a new appeal to count from this date. Costs in favor of appellant in this Court.

THE 17TH DECEMBER 1845.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 827.

IN the matter of the petition of Mirza Imam Allee, filed in this Court, on the 5th October 1844, praying for the admission of a special appeal from the decision of the principal sudder ameen of Moorshedabad, under date the 23rd July 1844, affirming that of the moonsiff of Jungeepore, under date 12th March 1844, in the case of Sheikh Kullunder Buksh and Sheikh Budderoodeen, plaintiffs, versus Petitioner and Sheikh Baboo, defendants. It is hereby certified that the said application is granted on the following grounds.

Plaintiffs sue to recover rupees 145-3, the value of rice-crop, forcibly cut and carried off by the zumeendar Imam Ally, and others his dependants, and got an exparte decree before the moonsiff, which was upheld by the principal sudder ameen. The petitioner, appellant, before the principal sudder ameen urged that notice had not been served on him at his residence Kotubpore, within the jurisdiction of the moonsiff of Laulbaug, but at the catcherry

within that of the moonsiff of Jungeepore—and the principal sudder ameen disposed of the case without investigating this plea. In his application for admission of a special appeal, petitioner further pleads that the evidence of one witness only Sheik Nukkie, was taken by the moonsiff to prove service of process on him, defendant.

The irregularity in the issue of process as prescribed by Construction 701, and the circumstance that one witness only was examined as to the service of process in violation of Construction 775, invalidate the proceedings of the lower court—a special appeal is admitted. Let the case be brought on the file of this Court, and returned for investigation by the moonsiff through the judge of Moorshedabad.

THE 17TH DECEMBER 1845.

PRESENT :

R. H. RATTRAY,

JUDGE.

CASE No. 70 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Shahabul, Munowur Ali, December 13th, 1844.

RUGHIOONATH SING AND OTHERS, APPELLANTS,
(DEFENDANTS,)

versus

MIRZA HOSEIN ALI, ALIAS MIRZA JAN, AND OTHERS,
RESPONDENTS, (PLAINTIFFS.)

THIS suit was instituted by respondents, on the 24th February 1844, to recover from appellants certain lands, with wasilat (or mesne profits) on the same, during the period of dispossession; amounting in the whole to Company's rupees 14,065-5-10-8.

The decree appealed against, furnishing a sufficient exposition of the facts and circumstances established in the investigation of the case, is in substance as follows.

Mouza Bhowreh, Pergunnah Suhsram, was the hereditary estate of Ishanath Sing, father of Musst. Muharaj Kowur and Musst. Byjnath Kowur, defendants; and of Pirteenath Sing, Bishunath Sing, and Dunya Sing, the ancestors of Ram Gholam Sing and others, also defendants. The share of Ishanath Sing was $8\frac{1}{2}$ annas, that of Pirteenath, &c, $7\frac{1}{2}$. On the 15th Assar 1211 Fusly, Musst.

Hunsraj Kowur, widow of Ishanath, executed a cowaleh, (or deed of sale) in favor of Khyroollah Beg, ancestor of plaintiffs, by which she sold to him her husband's portion of $8\frac{1}{2}$ annas, for 850 rupees; Pirteenath and his co-sharers having, on the 24th Assar 1210, executed another to him, for their $7\frac{1}{2}$ annas' portion, for rupees 1700. Under the purchases thus made, Khyroollah held possession during his life; and after his death, his heirs succeeded. From 1211 to 1231, the lands were kept in their own hands; in 1232 and 1233, Govind Race, Bishunath Dass and others held them, from them, in farm; and from 1234 to 1242, Keesur Pooree held them similarly. In 1240, Ramgholam Sing, Dhurnnath Sing, Rughoonath Sing and Durpnath Sing, defendants, in collusion with Keesur Pooree, combined to dispossess them (the plaintiffs;) but three years of the lease remaining unexpired, they failed. On the expiration of the lease (of Keesur Pooree) however, in 1243, Ramgholam, &c., with Musst. Muharaj Kowur and Musst. Byjnath Kowur, united in opposing plaintiffs' occupancy; and this led to the interference of the foudaree court. The magistrate, on the representation of Keesur Pooree, that plaintiffs had not been in actual possession since 1241, and without any enquiry as to the *rights* of the parties, disposed of the case under Regulation XV. of 1824, and adjudged possession to Ramgholam and his party. From the evidence of plaintiffs' witnesses, and that derived from documents filed by them, their possession of the estate has been clearly proved; and the assertion of defendants, that Khyroollah Beg held under a mortgage (burna) tenure, is false. This is evident from the deed (burnanameh) filed by them, which is from 1216 to 1239, at rupees 385-6-0 per annum, without any pottah (lease) or kubooleut (acknowledgment,) of which there is no trace: other documents too, relating to matters between defendants and Khyroollah, bear the kaze's seal; but this has no such seal, and was never registered. Besides, if this burnanameh extended only to 1239, and defendants had then claimed possession, it would have been of no effect; or, if it had been pleaded, a something would have been granted shewing the nature of the arrangement, whatever it was. The defendants themselves prove the lease of the lands to Keesur Pooree, by plaintiffs, and the consequent possession, distinct from any document but the deed granting the lease in question. How can they pretend to a right which this lease to Keesur Pooree of itself disproves? The evil design of defendants is manifest. Of the papers filed by them, two, the burnanameh and an account, the first is on newly manufactured paper, stained with earth to make it look old; the other is newly written on an old piece of paper. The depositions of defendant's own witnesses, regarding the burnanameh, shew it to be false; and the acknowledgment of Musst. Muharaj Kowur and Musst. Byjnath Kowur, has evidently been added with the view of furthering the imposition of Ramgholam and the others of his party. The

rent paid by Keesur Pooree was 501 rupees: this will be adjudged as wasilat from 1243 to 1250,—and to this, defendants cannot possibly demur; and plaintiffs will receive possession of the 14 annas, share of the estate of Bhoureh, with mesne profits on the same, as sued for. The lands will be restored by Ramgholam Sing, Dhurmnath Sing, Rughoonath Sing and Durpnath Sing, who will pay as wasilat Company's rupees 5,648-9-16, and at the same rate to the date of resigning possession to plaintiffs. Costs to be paid by all the defendants; all having been implicated in the transactions by which the dispossession of plaintiffs was effected.

The Court, finding the above to be a faithful representation of the case before them, and concurring in the view of it taken by the principal sudder ameen, affirm the decree appealed from, with costs payable by appellant.

THE 18TH DECEMBER 1845.

PRESENT:

A. DICK,

JUDGE.

CASE No. 96 OF 1841.

*Special Appeal from the decision of Mr. J. H. Patton, Judge of
24-Pergunnahs.*

CHUNDUR KANT RAE CHOWDREE, KALEE KANT
RAEE CHOWDREE, &c., APPELLANTS, (DEFENDANTS),

versus

KALEE DASS DUTT, &c., RESPONDENTS, (PLAINTIFFS.)

*Pleders—Ghoolam Sufdur for Appellants, and Bunsee Budun,
Neelmune and Ram Pran, for Respondents.*

SUIT laid at Co.'s rupees 4,991, 1 anna, 2 cowries, 2 krant, amount of arrears of revenue paid, with interest and fine thereon.

The plaintiff's ancestor was proprietor of an estate, or talooq, in the 24-Pergunnahs. In it was a village named Kishoondoyopoor, which, in 1817, was taken out of the 24-Pergunnahs' collectorate, and attached to the superintendency of the Soonderbunds; and the revenue separately affixed on it, was 353 Co.'s rupees, 3 annas, 2 gundahs, out of the amount total of the revenue payable for the estate, or talooq. While under the Soonderbunds authority, it fell into arrear, and was sold at public auction in 1226, and purchased by one Buhwanee Churn Dutt, who sold it to Ram Koomar, ancestor of some of the appellants, and partner of the others. So long as it continued separate, and attached to the Soonderbunds, Ram Koomar paid up the revenue. After the lapse of several years, it was replaced under the collectorate of the 24-Pergunnahs, and reunited and made again part and portion of the estate, or

taloq, from which it had been separated. From that time, Ram Koomar paid no more rent, and during several years the jumma, or revenue, fixed on the village, was paid up by the proprietor of the taloq, respondent's ancestor : hence this suit.

The suit was instituted against the original auction purchaser's heirs, as he had allowed his name to continue on the Government register as proprietor, after sale to Ram Koomar ; against the collector who forced him to pay up the arrears, by reuniting the village to the taloq, and thus throwing it into jeopardy for the arrears of the other ; and against the heirs of Ram Koomar who purchased the village, held possession, and was in fact the real proprietor. The heirs of Buhwanee Churn answered, that they were not liable after sale and possession given, and years of revenue paid up by Ram Koomar.

The collector contended that he was not liable, because if Ram Koomar had objected to the reunion of the estate and the amount fixed on his village, he was at liberty to apply for a butwara or equitable distribution of revenue, and separation.

The heirs of Ram Koomar admitted possession and payment of rent so long as the village was separate ; but contended that the rejunction was illegal, and that the amount fixed on his village was exorbitant, and that it was impossible to say what portion he ought to pay of the arrear without a regular butwara, or distribution of jumma and separation ; and further, that he had sold the property, and others were in possession when the arrears accrued, and that therefore they should have been sued.

The suit was first tried by the principal sudder ameen, Moolvee Hufeczodeen, who, deeming true the statement of the defendants, heirs of Ram Koomar, that he had sold the property, and that the purchasers were in possession when the arrears accrued, dismissed the claim, intimating that plaintiffs might sue again including these last in the suit.

The judge, Mr. J. H. Patton, in appeal, disbelieving the sale by Ram Koomar, held him and his heirs alone responsible, and decreed against them, making them also liable for the costs incurred by the other defendants.

JUDGMENT.

Ram Koomar's heirs have admitted purchase and possession until the arrears accrued ; therefore the heirs of Buhwanee are exonerated. Ram Koomar, had he objected to the rejunction, or to the amount of revenue fixed, was at liberty to apply for a butwara, therefore the collector is exonerated. There is nothing produced by Ram Koomar's heirs to shew that the sale they allege by him ever took place, and was known to the plaintiffs, therefore the plaintiffs were not in fault for not suing the alleged purchasers or heirs. The plaintiff was correct in suing Buhwanee's heirs ; for had Ram Koomar denied purchase and possession, they would have been

residence in the *Mymensing* district, were divided into two equal shares, of which Panchanun, grandfather of plaintiffs, got 9 annas, and Rambullub, Gobind and Ramanathi the remaining 8 annas in equal shares of 2 annas, 13 gundas, 1 cowrie, 1 krant; and lot Buddul Khan in the *Rungpore* district was divided into five shares, of which Panchanun and Rambullub got each one share of 3 annas, 4 gundahs, and Govind Bullub and Ramanath three shares, amounting to 9 annas, 12 gundahs; the share in excess having fallen to them for their agency in the purchase. Previous to this division, Govind and Ramanath sold 8 annas, 10 gundahs, and there remained to them only 1 anna, 2 gundahs, jointly, that is, 11 gundahs each.

Gobind solus collected on the zemindaree in Rungpore as the other sharers resided at a great distance; he used to pay the malgozaree and divided the profits between the sharers.

Kebol Kishen died before his father, Ramabullub, leaving Soloochona, his widow, and Kaleenath, Rama's adopted son. Ramabullub died, leaving the two last mentioned in possession. Panchanun died, Kishen, his son, succeeded, and his two sons, Rogonath and Sonatun, succeeded him. Govind died, his 11 gundas were divided between his three sons, Ram Sunkur, Kalee Kinkur and Neel Kaunth. Ramanath, Chundee Persaud's son, died, leaving Rutton Monee, his widow, in possession of his 11 gundas share. Ram Sunkur died, leaving his widow Sidhissoree in possession of his 3 gundas, 2 cowries, 2 krant. Kumla Dibah, Kalee Kinkur's widow, held her 3 gundas, 2 cowries, 2 krants.

Neel Kaunth continued to manage the estate in Rungpore, which was still in the name of "Rama Govind" in the collectorate, and the joint anlah were employed, and the profits were divided amongst the sharers respectively.

After this Neel Kaunth and Rutton Monee got their names registered in the Rungpore collector's books, but they continued to give us our profits. Neel Kaunth used to talk of having our names entered in the mutation register. In 1245, Neel Kaunth began to withhold our profits. Disputes arose, and he, in collusion with Kumul Narain, the Ijmalee gomasteh, stopped payments altogether, and the purchaser of Neel Kaunth and Rutton Monee's shares, Rogonath Chuckerbutty, in collusion with Kumla Dibah, Neel Kaunth's sharer, ousted us.

	as. gs.	} Of lot Buddul Khan in Rungpore.
Rogonath and Sonatun of	3 4	
Soloochona and Kaleenath of	3 4	
	c. k.	
Sidhissoree of	0 3 2 2	

They have also ousted us—

Rogonath and Sonatun of 9 beegahs,	} Of lakheraj, in village Bagparah, zillah Mymensing.
Soloochona and Kaleenath of 3 beegahs, ...	
Sidhissoree of 1 beegah,	

We now find our names are not recorded in the Rungpore collector's books. We have also ascertained that the defendant Neel Kaunth and other defendants have sold their own shares to Zuhoorooddeen and others in collusion. Neelkaunth has also caused Mudden Mohun Shah to put up our rights in execution of his decree against him, Neelkaunth.

The sudder jumma of Buddul Khan is Company's rupees 5,615, 9 anas, 2 pie; our shares 6 anas, 11 gundas, 2 cowries, 2 krants; the jumma of which rateably is 2,310 rupees, 12 anas; three times of which amounts to 6,932 rupees, 4 anas, which sum, with wasilat up to date of plaint, 2,746, equals 9,678 rupees, 4 anas. The lakheraj property valued at 18 years produce, at the rate of 8 anas per beegah, per annum, is 117 rupees. These two sums amount to Company's rupees 9,795-4, at which we estimate our action and pay for possession with mesne profits.

Answer of Zuhoorooddeen Chowdree, Razzeeroodeen Chowdree, Nusserooddeen Chowdree and Futteh Allee Chowdree. This suit has been got up at the instance of Neelkaunth Ray. Gobind Bullub and Ramanath bought lot Buddul Khan in 1205 for rupees 2,200, with their own funds, there were no other sharers in the estate, and sold 8 anas of it to Tatee Chowdree and Zumeeroodeen Chowdree, our ancestors, at various dates, in satisfaction of sums borrowed from them to pay their revenue. They retained possession of the remaining 8 anas in their own names and in the name of Ram Manick. This portion also fell in balance, and Ramanath and Gobind Bullub borrowed further sums from us; they both died; the collector issued notice for attendance of their heirs, when Neelkaunth, Gobind's son, and Ruttun Monee, widow of Ramanath, came in and proved their heirship, and their names were registered in the collectorate, and were current for 25 or 30 years. They did not pay the sums they had borrowed; suits were consequently instituted against them in the zillah court and in the court of appeal of Moorshedabad. Neelkaunth Ray and Ruttun Monee also brought actions against our ancestors for alleged dues; at length these were amicably settled, and, on adjustment, the sum of rupees 12,701 stood against them and in our favor. They could not pay cash; on this Neelkaunth Ray, with the consent of his brother Ram Sunker Ray and Ruttun Monee, executed a solehnamah, ikrar kistbundee, and rahimnamah, on the 7th Phalgun 1229, which was signed by an authority. They paid in part; but, failing to discharge the remainder, the kistbundee was put in execution. Neelkaunth pleaded in payment of the amount; but our claims were established in the Sudder Court.

Neelkaunth sued our ancestors in the zillah court for wasilat of the years 1231 and 1232, and got decrees before the principal sudder ameen and judge. The day before the sale, which was to take place on account of the kistbundee, the amount of the wasilat was set off against the amount of the kistbundee; the balance was

paid in cash by Neelkaunth, and the sale of the zemindaree was stopped. Had plaintiffs been sharers, they would then have protested. At length, the wasilat case, which was pending in the Sudder Court, was dismissed, and the lower court's orders were reversed, and the remaining 8 anas was included in the list of property to be sold in execution. Neelkaunth has, in collusion with plaintiffs, in order to avoid these debts, and to save the zemindaree, caused them to bring this action, and proposes to give in an answer admitting their claims. After the death of Ramanath and Govind Bullub, who held for 40 years, the 8 anas of the estate still unsold, was recorded in the names of Neelkaunth and Ruttun Monee, who were in possession for 25 years. Had the plaintiffs been sharers, they would have stated their claims and objected to mutations in the register.

The allegation that plaintiffs have all along enjoyed a portion of the profits is false. The plea is urged to bar the statute of limitations.

Answer of Muddun Mohun Shaha, Bepeer Beharee Shaha, and their gomashdah, Sham Kishore Shaha. The defendants support the pleas urged by their co-defendants, Zuhooroddeen Chowdree and others. They state that Neelkanth Ray, in 1233, opened an account with them in their house at Rungpore. That the malgozaree of lot Buddul Khan was always paid by them to the collector up to 1240, when the sum of 3,701 rupees stood against Neelkanth Ray in Chyte of that year. That loans had been made to him to pay his malgozaree, and also to discharge the instalments he owed to Zuhooroddeen. Neelkanth gave a bond for the amount due by him; but, failing to pay the whole, they sued him and got a decree against him, which they put in execution and endeavoured to realize from the 8 annas of lot Buddul Khan in Neelkanth's possession. From time to time the sale has been postponed through his means, and he has now brought forward the plaintiffs to institute this suit.

Answer of Casseenath Ray. Defendant pleads that lot Buddul Khan was bought with the joint funds of the family in 1205 B. S., and that the plaintiffs and defendants are collusively endeavouring to deprive him of his share.

Answer of Neelkaunth Ray. The estate lot Buddul Khan was bought by Gobind Bullub, my father, and Ramanath, with the joint funds of the family, who, without the knowledge of Panchanun Ray, sold $7\frac{1}{2}$ anas share to Tattee Chowdree, and 1 ana share to Kishen Gopal Ray and Gobind Ram Chowdree. Panchanun, on hearing of the sale, protested against it; but the dispute was amicably settled in 1219 Kartik, and the proceeds of the remaining 8 anas were divided according to our shares by Gobind, my father; on whose death I did the same. After deducting

the portion sold by my father during his life time, there remained on his death, 11 gundas, which was divided between his three sons in equal shares of 3 gundas, 2 cowries, 2 krants. I continued to collect for all the sharers, giving them their profits respectively. The amount annually collected did not turn out the same every year, notwithstanding which, my sharers demand from me the full amount of their shares. I have never ousted the plaintiffs. Occasionally it has been necessary to borrow money to pay the rents of the estate, but my sharers do not agree to pay their shares.

Answer of Kumlah Dibah—in support of the above.

In reply plaintiffs state, that no joint debt was incurred on account of the estate; that it is a very productive one, and very profitable, and there was no occasion to borrow money on it.

The principal sudder ameen, on the 14th June 1843, recorded as follows:

The plaintiff's claim, under a deed of division of 1219, their shares of lot Buddul Khan in the Rungpore district, and of certain lakheraj lands in the Mymensing district, stating they received their profits up to 1245, when they were ousted by Neelkaunth Ray.

The defendants, Zuhoorooddeen Chowdree and Muddun Mohun Shah, urge, the deed is false, and produce sundry documents in proof. The evidence of the plaintiffs, put forth in support of the deed, is not worthy of credit, for the following reasons:

1st. The deed is not registered; and from the date of its being prepared to the date of the plaint, a period of 29 years has elapsed, during which it was never produced in any court.

2nd. It is written on a stamp paper of improper value, viz. one rupee, which was purchased in August 1812; whereas by Section 3, Regulation VII. of 1809, after the 1st of January 1810, stamp paper of value of 8 anas is prescribed.

3rd. Moreover, the deed does not specify the respective shares of the lakheraj property in Mymensing.

4th. Plaintiffs do not sue for share of the talooks in Mymensing, neither do they assign any reason for the omission to do so. Having sued for possession of one portion under the deed, why are they silent as to the remainder?

5th. The names of all the sharers should have been recorded in the collectorate, whereas the name of one of the sharers, Neelkaunth, defendant, was recorded, and the plaintiffs remained silent on that occasion. The witnesses to the deed speak of two documents; the plaintiffs only refer to one. The witnesses brought forward to prove possession are ryots of Neelkaunth, and are put in in order to bar the statute of limitations. Ramanath and Gobind are declared to have acquired the property, and, in consequence, got larger shares than the others. How then can the estate be considered hereditary and divisible? The statement, that lot Buddul Khan was purchased with ancestral funds, is dis-

proved by the allegation of the plaintiffs that Ramanath and Gobind got larger shares, as they acquired the property.

The exhibits filed by Zuhoorooddeen Chowdree, and others, prove that Neelkaunth Ray and Ruttun Monee, with the sanction of Ram Sunkur Ray, on the 7th Phalgun 1229, executed an instalment bond in favor of Zuhoorooddeen, in which 8 anas lot Buddul Khan is distinctly called the property of Neelkaunth and the others. When Neelkaunth sued Zuhoorooddeen Chowdree for the mesne profits of 1231 and 1232, the plaintiffs did not appear and lay claim to their shares. In an action brought by Tattee Chowdree against the sellers of 4 anas of the estate, Ramanath and Gobind Bullub, a deed of sale was filed, specifying that they were the original purchasers, and no mention is made of plaintiffs as being sharers in the purchase. Again, in a suit brought by Rajkishen Ray, guardian of Govindnath Ray, former proprietor of lot Buddul Khan, against Rama Bullub Ray, Ramanath and Gobind Bullub defended the action, and stated the property was bought by them with their own funds, and that it did not belong to Rama Bullub. The plaint was in consequence dismissed. It is further proved by the documents on the record, that the compound name, "Rama Gobind," was in the collector's books from 1207 to 1212, and that the names of certain purchasers of portions of the estate were conjointly recorded, and kept in the books till the 20th September 1816. On the 26th of December of that year, the name of Ruttun Monee was entered in lieu of that of her deceased husband Ramanath. On the death of Gobind Bullub notices were issued for the attendance of his heirs in 1821, on which occasion neither plaintiffs nor their ancestors appeared to claim. All this serves to show that plaintiffs have no title to the property for which they sue, and that no deed of division was executed. Neelkaunth is greatly indebted to the defendants; and, fearing this estate should be sold in execution against him, has put up the plaintiffs to claim as sharers, and purposes an answer supporting their claim. Sundry documents put in by Muddun Mohun Shah, and others, prove that the property is not hereditary, but acquired by Ramanath and Gobind; and, moreover, shew that the plaintiffs never claimed it, though it was for a long period the subject of litigation in the courts and elsewhere.

Under the above circumstances, I dismiss the plaint, reserving to Must. Sidhissoree the right of bringing an action separately for her share. This order, however, is not to affect the rights of Lukhee Debah, widow of Ram Manick, decreed in case No. 174, by the principal sudder ameen on the 29th September 1842. Whatever portion of the estate may be found in Neelkaunth's possession must be sold in satisfaction of the decrees of Zuhoorooddeen Chowdree and Muddun Mohun Shah defendants. Costs chargeable to the plaintiffs.

BY THE COURT.

The record of this case clearly establishes that the defendant, Neelkaunth Ray, was acknowledged, for a course of years, by the plaintiffs as manager on their part, and his acts must be considered as binding on them. This action is evidently a collusive one, instituted by the plaintiffs, at the instigation of Neelkaunth Ray, to evade execution of the decrees, passed in favor of the Chowdrees and the Sahoor, against Neelkaunth Ray, and must not be allowed to bar their claims to recovery of the amounts awarded to them by final judgment of the courts. Under the above circumstances, the Court amend the decision of the principal sudder ameen, and decree to the appellants so much of the property claimed in the plaint as lies in the Mymensing district, to which no counter claim has been set up, and dismiss their suit for the remainder situate in the district of Rungpore. Costs chargeable to the appellants.

THE 18TH DECEMBER 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 111 OF 1845.

Regular Appeal from a decree passed by the 2d Principal Sudder Ameen of Tirhoot, Syud Ushraff Hosen, March 18th, 1845.

GUJRAJ SING, APPELLANT, (DEFENDANT,)

versus

DURBAREE LAI, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, on the 17th August 1844, to recover from appellant and his brother Birjraj Sing, the sum of Company's rupees 28,883-3, principal and interest, in virtue of a bond granted by the two latter to the former on the 27th of Assin 1241 Fusly.

It was established by the evidence adduced by respondent, that, on the date mentioned in the bond, he went to the house of appellant, taking with him 8,000 rupees, which money was paid to appellant in the presence of several persons there assembled; that a former bond for 5,539 rupees was returned to appellant, and torn up at the same time; and that a new bond was granted for the consolidated amount of the two debts, rupees 13,559, drawn out by the mutsuddee of appellant, by direction of the latter. Birjraj, the brother of appellant, was absent; but as they lived together and had joint interests, Gujraj had the bond drawn out in both their names, and signed for himself and brother.

On the part of appellant there was no evidence whatever in refutation of that in support of the demand. The facts were denied ; and the legality of the proceeding, as exhibited before the court, questioned. The principal sudder ameen, however, overruled the objections, and passed a decree for the sum claimed against Gujraj ; exempting Birjraj, as not a party to the transaction, from all responsibility and all costs.

Deeming this judgment to be a just and legal disposal of the case, the Court affirm it ; with costs payable by appellant.

THE 20TH DECEMBER 1845.

PRESENT :

R. H. RATTRAY,

JUDGE.

CASE No. 39 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohammad Majid Khan, December 24th, 1844.

SYUD NAZIM ALLI, APPELLANT, (PLAINTIFF,)

versus

LALA JEETUN LAL, ZUKKEOODDEEN AIIMED, (SALE PURCHASERS,) MUSST. TAHUREH, MUSST. ZEBONISSA, AND MUSST. JUMELLEH, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant, on the 18th September 1843, to recover from respondents a 4 annas, 16 gundas, 5 cowries' share of mouzah Kurhureea and other lands, and a similar portion of cash, houses, &c., belonging to the estate of Sheikh Tubarukoollah, maternal uncle of appellant, deceased ; the whole of the estimated value of Company's rupees 7,824-6-7-16, with wasilaf (or mesne profits) at the rate of 425 rupees per annum, during the period of dispossession.

Tubarukoollah died, leaving two widows, Musst. Tahureh and Musst. Zebonissa ; and a daughter by Tahureh, Musst. Jumeleh. Zebonissa had no issue. He also left a sister, Musst. Uleemonissa, deceased, who had two sons, by her husband Hussun Ali, Wasif Ali and Nazim Ali (appellant.) Wasif Ali died, leaving a widow Bibi Budlun, and a daughter, Bibi Kuramutonissa, both living.

The claim of appellant comprehended a moiety of the estate of his mother, Uleemonissa, and a third portion of that of his brother, Wasif Ali ; amounting together as above stated.

It was opposed, on the plea of the entire estate of Tubarukoollah having been absorbed in the den-muhr (or marriage dower) of his

widows; who, again, had transferred half of their respective portions to Jumeleh.

There was no document in support of any den-muhr having been promised or conferred; and the oral evidence, such as it was, was in favor of Zebonissa, to the exclusion altogether of Tahureh. The principal sudder ameen rejecting this, and regarding as untenable the claim against the estate of Wasif Ali, whose heirs had not been made parties to the suit, called for a futwa as to appellant's legal share of his mother's estate; and, in conformity with the law as therein expounded, decreed to the extent of three annas; being a moiety of the whole, to which, as the sister of Tubarukoollah, she had been entitled.

For the remainder of the original claim, viz. 1 anna, 16 gundas, 5 cowries' share, an appeal was preferred to the Sudder Court; by which the judgment appealed against appearing just and equitable, the same is hereby affirmed, with costs payable by appellant.

THE 20TH DECEMBER 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 62 of 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Mâjid Khan, December 24th, 1844.

MUSST. TAHUREH, MUSST. ZEBONISSA, AND MUSST.
JUMELEH, APPELLANTS, (DEFENDANTS,)

versus

SYUD NAZIM ALI, RESPONDENT, (PLAINTIFF.)

THIS was an appeal against the decree for a three annas' share of the estate of Tubarukoollah, passed in the case No. 39, of 1845; under which number the particulars will be found detailed. The present appeal is dismissed, with costs payable by appellants.

THE 23D DECEMBER 1845.

PRESENT :

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 201 of 1844.

*Regular Appeal from the decision of the Principal Sudder Ameen
of Backergunge.*

JOSEPH PEREIRA, GUARDIAN OF THE CHILDREN OF JOHN
BROWN AND CICELY BROWN, DECEASED, APPELLANT,
(DEFENDANT,)

versus

RAMCHURN DUT, DECEASED, HIS HEIRS, RESPONDENTS,
(PLAINTIFFS.)

THE plaintiff, on the 22d April 1843, brought this suit before the principal sudder ameen of zillah Backergunge, to obtain possession of certain land held lakheraj in Roopatullee Joar, &c. The suit was laid at rupees 11,450-7-11-1-11.

The plaintiff stated that his father held 9 annas in the lakheraj lands in question, and the remaining 7 annas belonged to Mr. J. Brown, defendant's father, who had acquired that share by purchase; that on the death of plaintiff's father, his mother had been dispossessed of the greater portion of her lakheraj by Mr. J. Brown. Plaintiff was at that time a minor. Having attained majority, he has now brought this suit, *in forma pauperis*, to obtain possession of the lands of which he has been deprived.

The defendant denied the right to the lands claimed; asserting that plaintiff was in possession of all the lakheraj lands he was entitled to in Roopatullee Joar.

On the 29th April 1844, the principal sudder ameen, after sending his nazir to hold an investigation and take evidence on the spot, awarded to the plaintiff possession of 9 annas share, in the lands ascertained to be component parts of the lakheraj holding, with wasilat.

On the 24th July 1844, the defendant appealed from this decision, urging that the right to the land had not been established.

OPINION.

The plaintiff claims 9 annas share in land held by his father as Aymah and Deotur, &c.; the remaining 7 annas being in the possession of defendant. The two shares never having been regularly divided off, it appears that, besides holding the 7 annas in the lakheraj, the defendant has also purchased the whole of the Shika-

mee Talookah, in which the lakhiraj lands are situated, and wishes to confound the lakhiraj with the zemindaree lands. From the nazir's enquiries on the spot, and the documents filed by plaintiff, it is plain that the land decreed by the principal sudder ameen is the lakhiraj land in question, and that it was in possession of plaintiff's father, and is now in possession of defendant. I consider this land to be held by defendant as lakhiraj; and that in this case consequently there is no dispute whether the lakhiraj tenure is good and valid or not, both parties holding it under that tenure. It is merely a claim brought by a 9 annas sharer, to obtain possession of lands entirely appropriated to himself by a 7 annas sharer. The lands having been identified, the principal sudder ameen has awarded the 9 annas share claimed in them with mesne proceeds from the date of dispossession. I see no reason to interfere with this award. Costs against the appellant.

THE 26TH DECEMBER 1845.

PRESENT:

R. H. RATTRAY and
C. TUCKER.

JUDGES,
and

R. BARLOW,
TEMPORARY JUDGE.

CASE No. 181 OF 1843.

Regular Appeal from the Judge of Patna.

GOKUL CHUND SAHOO, APPELLANT, (DEFENDANT,)

versus

MEER ABDOOLLAH, RESPONDENT, (PLAINTIFF.)

JUMOONA DAS AND OTHERS, CLAIMANTS IN APPEAL.

The original plaint in this case is dated the 7th September, and, with a supplement, was put in on the 23rd November 1838. It sets forth, that the defendant Gokul Chund Sahoo, who was the principal gomashtah of the house of Bijmath Sahoo, deceased, at Chuprah, was in the habit of visiting the plaintiff; more frequently, however, after Bijmath's death. Plaintiff goes on to say:—'When Gokul heard I was about to establish two houses, one at Benares and another at Calcutta, in the event of my securing the services of some trust-worthy gomashtahs, he offered his own; represented himself to be a respectable man, and asked me to admit him to a 2

annas' share in the profits. He proposed to appoint gomashthas from amongst his friends to carry on the business, and promised to go once a year to look after it. He said he had from his youth been accustomed to business. He agreed to be answerable for the gomashthas, should they make away with any monies. He was to share in the losses to the extent of 2 annas, and agreed to pledge his property, being a banking house in Kusbah Chuprah, which was in the name of Jeet Mul and Jadoobun, and his houses and gardens, as well as his villages in zillah Sarun. I accordingly opened two houses:—one in Calcutta, in the name of my eldest son Mehdee Allee Khan; and another in Benares, in the name of my second son Cassim Allee Khan, throwing in 100,000 rupees. Gokul advised that it should be in gold mohurs, which he would sell to the Nepaulese to considerable advantage. He was to procure letters of credit; appoint gomashthas; and commence business in one month. I accordingly, on the 19th Assin 1245 Fuslee, corresponding with 1894 Sumbut, made over to him 5,970 gold mohurs, valued at 99,997 rupees, 8 annas, and 2 rupees, 8 annas in silver; and he signed a deed in the abovementioned terms,—the property adverted to, being at the time in his possession,—bearing the last mentioned date, and I have the said deed in my hands. Defendant sent the gold mohurs to Jeet Mul and Jadoobun; and in a few days started for Chuprah himself. After the lapse of a month, seeing no prospect of the houses being established, I repeatedly urged him to do so, or to return the cash. He sometimes replied through other persons, and sometimes promised to reply. As the defendant has failed to make good his engagement, I sue to recover the amount advanced.'

The supplementary plaint explains that, subsequent to the preparation of the original one, an offer of compromise was made; but no adjustment having been entered into, a supplement is filed, claiming interest from the 7th September to the 23rd November 1838.

Before filing his answer, the defendant requested the plaintiff might be called upon to produce the original deed; as he had never executed any thing of the kind, he urged it must be a forgery. This was done; and, on the 15th March 1839, a copy was taken, and the original returned to the plaintiff's vakeel.

The defendant's answer, filed on the 7th January 1840, is as follows:

'The deed on which this action is brought, is a forgery. The terms of it are quite contrary to the custom and practice of muhajuns. I never took any money from the plaintiff; nor did I execute the deed, or enter into any engagement with him. It is not attested by the kazee, nor is it registered. There are four distinct matters set forth in it. It is a deed of partnership; a receipt for money; a pledge of property; and a security bond for the gomashthas. Under the law all these documents should have

been drawn out on separate papers. Were the plaintiff's statement correct, I should of course have required him to execute an engagement to me, acknowledging me as a 2 annas sharer, otherwise I had no security. Though the money was his, the houses were to be in the names of his sons. There is no specification of the property pledged. This was absolutely necessary; for the greater part of it is in the names of other persons, and the fact is that some of it does not belong to me. The houses were to be in the names of plaintiff's sons. I was a head servant; and in such case security would only be required to cover embezzlement: why should I pledge all my property? The plaintiff states I am a 2 annas sharer. It is the practice of muhajuns that the names of all the sharers should be entered in the firm; whereas the business was to be carried on in the names of his sons also. So far from being intimate with the plaintiff, (and engagements of the nature referred to by him are only entered into between friends), we are at enmity.—The defendant proceeds to detail several cases to establish the fact.

‘It is quite out of the question that a lakh of rupees in gold mohurs should be disposed off at Chuprah, or even at Patna in one month. If profit were plaintiffs’ object, he would have sent them to his own house at Chuprah. He was aware it would be difficult to prove that a lakh of rupees were taken away on hackeries or by coolies; and therefore states the amount was paid in gold mohurs. I never sent to settle with the plaintiff after the action was brought; moreover, previous to the date on which the deed purports to have been executed, I had left the city of Patna.’

In his reply, filed on the 16th July 1840, plaintiff urges that the defendant and his nephews are in copartnership. ‘The gold mohurs I paid, were sent to their house at Chuprah. The plea that the villages in possession of each of them are not detailed, is of no avail: that point can be settled in execution of the decree. Up to the period that the agreement was drawn out, I had no reason to doubt defendant’s word.’—The remainder is a repetition of the plaint, and a denial of what is urged in the answer.

In order to the understanding of this case, it is necessary to advert to certain enquiries and proceedings relating to the loss of the deed, dated 19th Assin 1245, on which this suit is founded. This case, with others, was transferred, under orders of the Sudder Dewanny Adawlut, from the file of the 2nd principal sudder ameen, Imdad Allee, to that of Ojudhea Persaud Tewaree, the 1st principal sudder ameen. On the 4th July 1840, Kisanaram, a mohurrir on the establishment of the last mentioned officer, reported, in a petition presented to the principal sudder ameen, the loss of the deed in question, and of the plaintiff’s reply, which he, the mohurrir, had taken to his home, and dropped from his conveyance on his way thence to court. Measures were adopted for the recovery of the missing deed, but without success. On the 4th July the

principal sudder ameen informed the judge of the occurrence ; and, on the 5th January 1841, returned the case to the judge, with a request that it might be removed from his own file. It was accordingly retained by the judge, and disposed of by him on the 6th April 1843. The Court defer their remarks on the loss of this deed, and on the circumstances attending the filing of a copy of it before the 2d principal sudder ameen, Imdad Allee, for the present ; and proceed to give an abstract of the decision passed by the judge of Patna, Mr. A. Smelt, on the last mentioned date, which is as follows :

‘ In my opinion the plaintiff has established his claim ; and the defendant’s pleas are not good, for the following reasons. The question is, did the defendant take the gold mohurs and execute the deed ? The depositions of Nawab Mahomed Reyza Khan Buhadoor, Boorhan Allee, Amance Tewaree, and Chundoo Lal, merchants, of Aga Allee Hossein, a vakeel of this court, and of Bukht Bahadoor, witnesses to the deed, principal men in the city, and Mirza Mahomed, nephew of Nuwab Amernodowlah, Mayeen-ul-moolk, Nasir Jung, alias Nuwab Mirza Mehdoos Sahib, one of the relatives of the king of Oudh, and Aga Mirza, a man of property, and Moostafa Khan, and Aman Allee Khan, and Kishen Chund, witnesses present at the assembly, prove the complete execution of the deed, and the delivery of it, and the taking of the lakh of rupees’ worth of gold mohurs by the defendant from the plaintiff ; that he counted and tested them, and took them away in bags. The depositions of Kumahee Sing and Mujlis Roy, who are cognizant of the circumstances, who prove the gold mohurs were taken from Patna to Chuprah the residence of the defendant, all of which were taken in my presence ; and moreover the evidence of Chundoo Lal, one of the subscribing witnesses to the deed, shewing he counted and tested the mohurs with the defendant, and gave them to him ; and the evidence of Hyduyet Khan, Chutter Sing, and Cheringooee Roy, prove that defendant admitted the debt and promised to pay it. The evidence of Tilook Sing and Tilokee Sing and Sheer Allee, servants of Moonshee Rahit Allee Khan Buhadoor, deputy collector, proves that defendant applied to the plaintiff to forego the interest, and offered to pay the principal by instalments, at the deputy collector’s house, while the case was pending ; and also the evidence of the deputy collector himself (who was called for by myself) clearly prove the claim of plaintiff and disprove the pleas of the defendant. The plea that the original document was never filed in court, is false ; for the plaintiff, immediately on the order of the 2d principal sudder ameen, written on the back of the petition presented by the defendant, filed the original document, and that officer, on the 15th March 1839, recorded on the back of it that he had seen it, and had examined the value of the stamp, and

ordered its return, that it might be filed in due course without keeping a copy of it.—Again, on the same day, he recorded a second proceeding, in which it is stated he took a copy of the deed duly signed, and sealed it, and returned the original, placing the copy in the record office. On the 12th May 1841, a proceeding was sent to the 2nd principal sudder ameen, at that time holding the office of principal sudder ameen in Behar, with the original document; and he, on the 26th of that month, in reply, stated that the original deed was filed and a copy of it signed and sealed with his seal, and deposited; that it was the duty of his sheristadar, Rajinder Lal, to make the copy. The said sheristadar deposes to the original being filed, and a copy, signed and sealed by the court, being kept in the record. Under these circumstances, there can be no doubt that the original was filed, and a duly signed and sealed copy also put in the record office; and this copy, so signed and sealed, must be taken in lieu of the original. Besides, while the case was pending before the principal sudder ameen, the plaintiff gave the original deed to Sheikh Burkutullah, his vakeel, who gave it to Sheo Sahae, a vakeel, in consequence of his own illness; and it is stated by them both that many papers are filed by the latter for the former vakeel. Sheo Sahae gave it, as was customary, to the deputy record keeper, who lost it with other documents, on which account the record keeper and his deputy were dismissed. This proves the original deed was first filed in the 2nd principal sudder ameen's court, and then in that of the principal sudder ameen (Ojudhea Persaud); moreover, the defendant, in his petition filed the 29th December 1840, admits that the original deed was put in. No party would cause a document in his possession, which would establish his rights, to be lost. Independent of this, in the event of there being a copy in court, duly signed and sealed, what benefit, or injury, can be contemplated by the loss of the original?—The plea, that the deed was not registered or attested by a cazee's seal, is insufficient; for, whether a deed be sealed and signed or not, it requires to be proved; and the plea is inadmissible in the presence of so much proof, derived from such creditable evidence. The non-registry is a matter of no importance. Plaintiff has filed numerous unregistered documents for lakhs and for thousands; copies of (8) eight of these are on the record, and are for large amounts. Defendant's plea that this document is a deed of partnership and a receipt, and a pledge of property, and security bond, and that these four cannot be admitted on one stamp paper, and that these should have been drawn out on separate stamps, is not good; for the stamp covers the claim, and a separate stamp is not required for each of the conditions included in the deed. The allegation, that enmity existed between defendant and plaintiff, at the time of the transaction, is proved to be false; for defendant

sent to plaintiff a power of attorney from the Rajah of Bettia to the house of Byjnath Sahoo, with his letters to plaintiff's address, and defendant does not deny the said letter, which is filed. This proves they were friends before, and also at the time of the transaction. Should any differences have arisen since that period, they cannot effect the merits of this case. The evidence of the witnesses for the defendant, to shew what is customary amongst merchants, does not apply to this case, and is not worthy of credit. The depositions of Ramgut Roy, Muzboot Lal, and others, who depose that defendant had gone to the fair at Amce is not worthy of credit. Some say Amce is distant 5 coss; some 7 coss from Patna; some say they did not know defendant previously. Such highly respectable evidence for the plaintiff as is produced in this case, necessarily outweighs the evidence for the defendant. Defendant states he had no authority to pledge the property included in the deed. Had it belonged to others, they of course would have come forward when the alienation was prohibited by Ojudhea Persaud Tewaree, the 1st principal sudder ameen, on 28th September 1839. Under the above circumstances, I consider the execution of the deed, its delivery by the defendant to the plaintiff, and his receipt of the cash, proved by the evidence of plaintiff. I therefore decree in his favor the amount claimed, with interest from date of plaint; with costs and interest on the amount decreed to the date of realization.'

By the Court:—The alleged loss of the original deed on which the present action is founded, the circumstances attending the taking a copy, said to be a true copy of it, and the nature and value of native evidence, involving the proof of execution of the original deed, and the receipt of the cash, are the principal points, to which the Court have turned their attention in disposing of the case now before them.

There can be little doubt that an original deed, purporting to be a genuine document, and to be signed by the defendant, Gokul Sahoo, was produced before the 2nd principal sudder ameen, Imdad Ali; who deemed it proper, at the request of Sheikh Burkutullah, the plaintiff's vakeel, for "peculiar reasons," to record that he had seen the original. A true copy of this, it is alleged, was, by his order, on the 15th March 1839, retained in his records, and the original returned to the plaintiff's vakeel; but a proceeding of the 1st principal sudder ameen, Ojudhea Persaud Tewaree, dated the 3rd April following, shews that the said copy, enclosed in an envelope, accompanied by a second proceeding of Imdad Ali, also dated the 15th of March, reached him on the 3rd April only; the record having intermediately been transferred to his court from that of the 2nd principal sudder ameen. Now, as regards this copy, the Court have no proof before them that the copy is a true copy of the original. The

principal sudder ameen, in his reply to the judge's requisition, on the subject of the exhibition of the original, and its state when laid before him, and regarding the preparation of a true copy of it, says, he did not attentively examine it,—that it is the duty of his sheristadar to make true copies of documents that may be filed. He further says, that *that* sent for his inspection is a true one; notwithstanding which, the Court find, on perusal of Rajinder Lal, the sheristadar's deposition, that he states he does not remember the purport of the deed; that it was copied, but, by whom, he does not remember; that he cannot say whether it was compared or not; and concludes with saying, that the copy put in is a copy signed by the principal sudder ameen, Imdad Ali. They find that the allegation of the judge to the effect, that the original deed was filed in the courts of both the 2nd and 1st principal sudder ameen, is not borne out by the evidence in the case; and that the copy on the record is neither compared nor verified by any of the officers to whom that particular duty is usually assigned, though the judge, in his decree already referred to, declares the copy to be a true copy, which, in the absence of the original, must be considered equivalent to it, and admitted in lieu of it. Setting aside the extreme irregularity of the principal sudder ameen, in calling for, receiving, and recording his having seen the document, in peculiar terms, immediately on the institution of a suit, in opposition to the law which distinctly enjoins that exhibits shall be called for when the pleadings shall have been completed, the Court cannot but remark on the very unsatisfactory, as well as irregular *precautionary* measure adopted by the 2nd principal sudder ameen, on the return of the original deed. The measure adopted, they observe, has failed altogether in its ends; the copy, even as a copy, being inadmissible by the Court as evidence, owing to the defect of verification. They hold, that the simple averment of the copy being a true one, made by the 2nd principal sudder ameen, Imdad Ali, subsequently at Behar, when he was no longer officially connected with the case which was pending in the Patna court, cannot be received as evidence in a court of justice, and consequently that the copy must be held to be altogether unauthenticated.

The alleged loss of the original deed, the probabilities of the execution of it, and the actual giving and taking of so large a sum as a lakh of rupees worth of gold mohurs, as stated in the plaint, must be decided with reference to the weight to be attached to the evidence adduced.

The Court are opinion that the execution of the deed by the defendant, under the circumstances, and in the manner set forth, is most improbable; that the statement of such a valuable original deed having been first made over by Sheik Burkutullah, plaintiff's vakeel, to another pleader, and by him given into the hands of a very subordinate officer, a mohurrir named Kishnaram, by

whom it was retained for some days and eventually lost, without further enquiry as to its having been duly filed, is equally improbable. They observe, that it is quite clear from the deposition of the said Kishnaram that the original deed, whatever it may have been, was never *filed* in the 1st principal sudder ameen's court; that he merely deposes that he received it at the close of the day after the court had risen, at the foot of the stairs of the court-house, and carried it to his own house, and lost it on his way back to court some days afterwards. They are aware that natives of every class, generally, have the greatest objection to appear as witnesses in any matter; but they find that, notwithstanding, in the present case, many persons of the higher orders, judging from their description and the titles appended to their names in the decree, are said to have attested the alleged deed. They find, moreover, that some of these witnesses have had pecuniary dealings with the plaintiff, and that others are indebted to him in large amounts under decrees of court.

On the discovery of the loss of the deed, they hold, it was incumbent on the plaintiff to bring forward any subsidiary proof he might have, in support of his claim; and that for this purpose the banking-house books, a source of evidence very commonly resorted to, in which, of course, the disbursement of so large a sum must have been entered, ought to have been produced by the plaintiff; but that they have never been proffered.

As regards the offer of a compromise by the defendant, referred to in the supplementary plaint, the Court cannot but come to the conclusion that this was put in to lay a foundation for additional evidence of the transaction, though filed apparently to claim interest for a few days only. This supplement, they observe, was not needed, as interest on the principal, *pendente lite*, is always awardable by the courts. Though the judge considers the fact of the offer of compromise clearly established, and relies greatly on the evidence of Rahut Ali in proof, the Court do not find any sufficient ground for the opinion recorded: nothing in that witness's deposition, after attentive perusal, justifies the conclusion that the defendant acknowledged the debt; and, having acknowledged, desired to settle it amicably.

Though the case for the defendant is not satisfactory, yet it must be borne in mind that he has had much difficulty to contend with in having been deprived of the privilege of seeing and testing the original deed, and proving the alleged forgery of his signature thereto: but the *onus probandi* in the first instance, rests with the plaintiff; and he has altogether, in the opinion of the Court, failed to make good his claim.

The non-production of the original deed, said to have been executed by the defendant; the defect in the due verification of the copy, and the unsatisfactory evidence by which it is attempted

to prove that the copy is a *true* copy ; the still less satisfactory evidence of the witnesses alleged to have attested the execution of the deed and the receipt of the cash ; added to the circumstances elicited in the course of the trial, form, as a whole, such meagre evidence, as does not, in the judgment of the Court, amount to probability, much less to satisfactory proof, of the transaction on which the suit is founded. They therefore decreed the appeal ; with all costs chargeable to respondent.

The principal sudder ameen, Indad Ali, having resigned the service, and having been pensioned by the Government, the Court do not consider it necessary, at this present time, to call upon him for an explanation of his conduct in this case ; which otherwise they would have deemed it their duty to require from him.

THE 27TH DECEMBER 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 310.

IN the matter of the petition of Moonshee Gholam Sufdur, filed in this Court on the 21st June 1845, praying for the admission of a special appeal from the decision of Frederick Cardew, Esq., judge of zillah Beerbhoom, under date the 22d March 1845, amending that of Syud Izzut Ali, principal sudder ameen of the same zillah, under date 20th April 1844, in the case of Maharajah Mahtab Chunder Behadoor, plaintiff, *versus* Peearce Mohun Roy, Gholam Sufdur, and others, defendants.

It is hereby certified, that the said application is granted on the following grounds.

This suit was instituted by the plaintiff for the recovery of rent, due on an ayma moocurruree tenure, from Bysack to Assin 1248 B. S. Having obtained a summary decision against Peearce Mohun Roy, &c., the former proprietors, for the balance of rent due up to the close of the year 1247 B. S., the plaintiff caused the tenure to be advertized for sale in the collector's office, to realize the same ; but the sale did not take place till the 12th Assin 1248

B. S. The tenure was purchased by one Cheenebass, for and on account of his master, the defendant Gholam Sufdur. In 1249 B. S., the plaintiff instituted a summary suit against the purchaser for the entire rent of 1248 B. S.; but the collector exonerated the purchaser for the kists Bysack to Assin, being previous to his purchase. On this the plaintiff instituted the present suit for the rent from Bysack to Assin 1248, against both the former moocurrureedars and the purchaser. The principal sudder ameen exonerated the purchaser, and decreed against the former moocurrureedars. The former moocurrureedars appealed to the judge, but notice was issued to the plaintiff, Maharajah Mahtab Chunder Behadoor, only. On trial, the judge, in the absence of the other defendant, the purchaser, who had no cause to appeal from the principal sudder ameen's decision, laid down as law that he, the purchaser, was answerable for the kists of Bhader and Assin out and out; and that for the kists of Bysack, Jeyte, Assar and Sawon, a mofussil enquiry should be instituted, as to the collections made by the former moocurrureedars and by the purchaser, and that they should be made liable for the zumeendar's rents for those months in proportion to their respective collections. The case is then ordered to be returned to the principal sudder ameen, to institute the above enquiries, and to decree against both to the extent and in the manner above set forth.

From this order the petitioner applies for a special appeal, as contrary to the practice of the courts to issue any order in appeal to the prejudice of a party not before the court. The Court are of opinion that the special appeal is admissible on these grounds; and further that the principle on which the judge acted is contrary to the practice of the courts. The broad principle is that a purchaser is not responsible for kists antecedent to his purchase; and if, after obtaining possession, he collected rents due to the former moocurrureedars, that was a question to be decided on suit by the said former moocurrureedars against the purchaser, and not on the suit of the zumeendar for his rent. The judge, on the principle adopted by him, instead of deciding between plaintiff and defendants, is entering into and adjusting a dispute between co-defendants.

It was further irregular in the judge to dictate to the principal sudder ameen how to decree: for, under the orders of the judge, no discretion whatever is left to the principal sudder ameen, who is in fact made merely the executive officer to carry out the views of the judge. No discretion of judgment in the issue between the parties is left to him. We accordingly admit the special appeal, annul the judge's order of the 22d March 1845, and direct that the case be returned to the judge, with instructions to replace the appeal on his file, and to dispose of it in a legal manner.

THE 29TH DECEMBER 1845.

PRESENT:

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 178 OF 1844.

*Regular Appeal from the decision of the Additional Judge of the
24-Pergunnahs.*

ANUNCHUNDER HOLDAR AND OTHERS, APPELLANTS,
(PLAINTIFFS,)

versus

MUSST. BEEMOOLLA DEBBEA AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

FOR cottahs 14-1-17½ *deotur* land, with two temples, a *ghaut*, *pooshteh* and *chandee* near Kalleeeghat; suit laid at rupees 6,046-14.

The plaintiffs stated that this land was part of land decreed to them in case No. 1120; that in execution of that decree, it appeared that the small piece of land now sued for was in possession of persons not parties to that suit. The decree could not therefore issue against them, and the plaintiffs were referred to a regular suit to enforce their claim, which they have now brought under date the 2d December 1836. The defendants denied that the land formed part of the land decreed to plaintiffs in case No. 1120, adding that it was not part of the *deotur* land belonging to plaintiffs, but was defendants' own property.

On the 21st March 1844, Mr. E. Deedes, additional judge of the 24-Pergunnahs, dismissed the claim, deeming it not established that the land, temples, *ghat*, &c. belonged to plaintiffs, nor that they were included in their former plaint in case No. 1120.

On the 1st July 1844, the plaintiffs appealed to this Court.

OPINION.

It is quite clear in my opinion that there was no mention in the former plaint, in case No. 1120, of the temples, *ghat*, *pooshteh* and *chandee*, now claimed; and that further the boundaries of the land claimed on that occasion did not include the land now sued for. The whole of the papers adduced appear to me to shew that the thing in dispute, in the former case, was solely the garden and tanks made by Huzoorce Mul. To these the plaintiffs are entitled, and to no more; and under the former decree they have obtained posses-

sion of them; and although the quantity of land stated in their former plaint was a few cottahs more than the quantity they received in execution of their decree, this circumstance can only be attributed to their having over-estimated the extent of their land. I see no reason to interfere with the judge's decree, which is hereby confirmed. Costs against the appellants.

As the plaintiffs' suit is dismissed, no order is necessary on the petition of the Oozerdars.

THE 29TH DECEMBER 1845.

PRESENT :

R. H. RAITRAY and

C. TUCKER,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 130 OF 1843.

*Regular Appeal from a decision passed by the Principal Sudder
Ameen of Sarun, Syud Imdad Ali, March 13th, 1843.*

HURSHUNKER NURAIN SINGH, APPELLANT, (PLAINTIFF,)

versus

GOVERNMENT, BUNWAREE LAL, MUNOHUR DAS, AND
OTHERS, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted, on the 18th. December 1841, on the part of appellant, to obtain the reversal of the sale of the estate of Shampore, in pergunnah Burye; with wasilat, or mesne profits, during the period of dispossession: the whole estimated at Company's rupees 9,550.

The estate was sold on the 18th June 1841, for Government balances, due to that date, amounting to rupees 802-6-7.

Appellant pleads, that the sum demanded was tendered previously to the sale, and refused; that a portion of the estate was under partition, and, as such, exempt from the general operation of the sale laws; that a manager had been appointed, by whom excess of collections had been made beyond what was required to satisfy the arrear; and that another estate belonging to him, had been already, on that, the day of sale, sold, for a sum which left a surplus, after

the discharge of its balance, sufficient to cover that for which Shampore was advertised. An additional objection was subsequently urged, in regard to the sale itself, which it was asserted had been postponed from the day originally named, without the usual notice of postponement.

Without entering into an unprofitable detail of proceedings on the part of the revenue authorities, it is sufficient to state, that the asserted tender of the arrear for which the estate was brought to sale, was disproved ; that the portion which had been under partition (mouzah Shumoordeh, purchased by Munohur Das and another at a sale held in execution of a decree of court) was not so at the time, the proceeding having been previously quashed by the Board of Revenue, as illegal ; that, on the 27th February¹⁸²² preceding, notice had been issued to those concerned, to attend the adjustment of the suzawul (or managers') accounts, which were then adjusted accordingly ; and that the surplus of the proceeds of the previous sale, sufficient to cover the balance due on Shampore, had no existence, inasmuch, as the purchase money had not been paid in, and was not demandable within thirty days subsequently. The objection, in regard to the irregular postponement of the sale day, was proved to be groundless : it had been duly made and recorded.

The principal sudder ameen was of opinion, that there was nothing irregular or illegal in the conduct of the sale, upon which its reversal might be grounded ; but, deeming the circumstances of the case to involve that upon which the indulgence of the Government might be invited,—with reference, more particularly, to the funds belonging to appellant, forthcoming to, if not already possessed by the collector, to the partial partition commenced, of mouzah Shurmoordeh, and to the recent management of a suzawul,—he affirmed the sale ; but, at the same time, decided, that, if appellant should pay the sale purchaser a thousand rupees, in addition to the sale-purchase-money (eight thousand rupees) his estate should be restored to him. The sanction of the Governor General to this arrangement was to be applied for, and the measure effected under Section 26, Regulation XI. 1822.

Against this latter part of the decision, a separate appeal was preferred, by the sale-purchaser : in the present case, the appeal was brought to obtain a reversal of the sale. The Court, deeming the proceedings of the revenue authorities, impugned by appellant, not to be open to the objections urged against them, affirm this portion of the judgment of the lower court ; with costs payable by appellant.

THE 29TH DECEMBER 1845.

PRESENT :

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 166 OF 1843.

*Regular Appeal from a decision passed by the Principal Sudder
Ameen of Sarun, Syud Imdad Ali, March 13th, 1843.*

BUNWAREE LAL, APPELLANT, (DEFENDANT,)

versus

HURSHUNKER NARAIN SINGH, RESPONDENT, (PLAINTIFF.)

THIS was an appeal against the order passed in the case detailed under No. 130 of 1843, viz. that "if the late proprietor of the estate of Shampore (the appellant in that case, and respondent in the present) should pay the sale-purchaser (appellant in this case) a thousand rupees, in addition to the sale-purchase money (eight thousand rupees,) his estate should be restored to him: the sanction of the Governor General to the arrangement being applied for, and the measure effected, under Section 26, Regulation XI. of 1822."

The Court observe, that the sale of Shampore was confirmed by the principal sudder ameen, on the express ground of no illegality or irregularity having attended the conduct of that sale, upon which a reversal of it might be founded; they further observe, that the law under which the order now appealed against was passed (Section 26, Regulation XI. of 1822,) allows the measure involved in it, only in instances in which it shall appear to the court, that the proceedings of the collector or any of his officers have been improper or irregular, and that the plaintiff has been endamaged from that cause.

As this, the fundamental reason, specifically assigned as the basis of the indulgence thus allowed to proprietors of estates, brought to sale under the circumstances stated, is altogether wanting in the present instance, the Court reverse that portion of the decision now appealed against, with costs payable by respondent.

THE 30TH DECEMBER, 1845.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 68 OF 1841.

*Regular Appeal against the decision of the Judge of the
24-Pergunnahs.*

MR. JAMES HILL, (PLAINTIFF,) APPELLANT.

versus

MR. JAMES HASTIE, MR. ROBERT BEAUCHAMP, ON
DEMISE, HIS SON, MR. R. G. BEAUCHAMP, PER THE
RECEIVER OF THE SUPREME COURT; AND THE COLLECTOR OF
THE 24-PERGUNNAHS, (DEFENDANTS,) RESPONDENTS.

THE plaint, which was filed on the 12th September 1838, states
as follows.

Mr. James Gilbert, executor of the late James Brown Moore, gave permission to Jenkins, Low and Company, to sell 18 biggahs, 14 cottahs of lakheraj land, situate in village Howrah, on the west of the river Hooghly, with a two storied house belonging to him, the said James Brown Moore, deceased. It was accordingly sold, and purchased by the plaintiff on the 12th May 1835, at public sale, for 8,500 rupees. Plaintiff paid half the amount forthwith, and was put in possession of his purchase by the executor. Mr. J. H. Patton, the magistrate, gave him an agreement to pay 100 rupees per mensem for the said house as rent. The collector claimed and took possession of 7 biggahs, 6 chittacks, of the said land, as alluvial, upon which plaintiff applied for a pottah in 1835, when the collector reported in his favor to the commissioner, and from the 25th January 1836, took rupees 47-12-4, rent from him, granting receipts for the same. In June 1835, Mr. Gilbert died. Mr. Smoult took out letters of administration to his estate in August 1835, and received the balance of the purchase 4,250 rupees, the remaining half from me, on the 2d January 1836; giving plaintiff the boundaries of the land, and the former documents connected with it. On the 17th February 1838, the collector gave me a pottah

of the lands in question, styling them Mr. Moore's "muhlool" (holding), the rents of which I paid from the 13th Maugh 1242 to the 15th Assin 1244, being rupees 417-10-1. Mr. Hastie claims 4 biggahs, 13 cottahs, waste land of my purchased lands on the west of the river, and Mr. Beauchamp claims 7 biggahs, 6 chittacks, which I hold under my amulnameh, and I am ousted from these plots from February 1836. The value of the land is 320 rupees per biggah = 3734 rupees; the wasilat for 2 years, 8 months, at 390 per annum = 1040 rupees. I have paid rents to the collector 217 rupees, making a total of 4991 rupees, 10 annas, at which amount I lay this action.

Answer of James Hastie, as Executor, on part of John Coleman.—The plaintiff is not entitled to the 4 biggahs, 13 cottahs. Mrs. Brady *alias* Badshah Begum, got a pottah of 3 biggahs from the 10 annas and 6 annas zemindars of pergunnah Boroo Peykan bounded as follows; on the north by Mr. Bignell's work shop; on the west by Mr. Cowan's land; on the south by Mr. Coleman's jummaie land; and on the east by the river Hooghly. On the 5th December 1823 she sold her rights in the said land to the said John Coleman for 2100 rupees, he built a brick ghaut and gates on it, from that date he, and I, his executor, have held possession. These 3 biggahs, and certain other lands east of them, broke away and again formed; disputes arose between Mr. Beauchamp and myself for a pottah of them; and the collector, on the 20th June 1837, gave me the preference, settling with me for 1 biggah, 13 cottahs, besides the above 3 biggahs, the whole of which remain in my possession. Mr. Beauchamp ousted me of 10 biggahs, which the collector eventually resumed and made a settlement with him; I sued them both, and the case is still pending. On measurement, these lands proved to be an area of 9 biggahs, 18 cottahs; besides this, there is no land on which to build a yard, whence come the 7 biggahs, 6 chittacks claimed by the plaintiff? I have already shewn plaintiff is not entitled to the 4 biggahs, 13 cottahs, he claims to recover from me.

Answer of Mr. Beauchamp.—I never ousted plaintiff of the 7 biggahs, 6 chittacks, as alleged; nor do I know where the land he claims, lies—Mr. G. Reeves bought from Doorga Dass Goopt and Shubnarain Ghose 6 biggahs of land, which they held under pottah from the 10 and 6 annas zemindars, at different dates, and built docks thereon. On his death his property went into the hands of the Supreme Court, and my father bought the land in question on the 12th June 1836 for 7,000 rupees, and built a brick house thereon. After my father's purchase the land below the bridge was levelled by him, being included in the dock yard. On the measurement and resumption of Chur Howrah, there turned out 3 biggahs 17½ cottahs in excess of the 6 biggahs I was entitled to, and my father

petitioned on the 22d June 1837, to have a settlement of these lands, which he had levelled, made with him. An order, that a pottah of all the 9 biggahs 17½ cottahs should be granted to him, was passed; but we have not yet received the pottah. There were also other 9 cottahs 13 chittacks adjoining the above lands, for which my father also applied; but, on Mr. Hastie raising objections, the collector settled with him—reserving my right of passage over the bridge: my father appealed to the commissioner, an explanation was called for, but no final orders have issued. My father has all along paid 52 rupees, 10 annas 17 gundas, to the collector as rent for the said 9 biggahs, 17½ cottahs, and I hold receipt for the same; since my father's death I too have been in possession as above. If Mr. Hastie has ousted the plaintiff of 4 biggahs, 13 cottahs, let him answer for it.

The Collector of the 24-Pergunnahs answered as follows.—Lukhēenarain ameen measured lands bounded as follows—on the north, the Howrah road; east, the river Hooghly; west, other lands in Mr. Moore's previous occupation; south, Mr. Coleman's lands. Within this area were 7 biggahs, 6 chittacks, they were taken by Mr. Moore, who engaged to pay 47 rupees, 12 annas, 4 gundas malgozaree for them; he did pay up to the date of his death. Mr. Hill entered on the lands, and from Maugh 1242 paid the rents, saying they were in his possession by right of purchase. On the 27th December 1837, his moktear put in 2 pottahs and 4 bills of sale in proof of his right of possession. The collector as usual issued an ishtahar on the spot; and as no one came forward with objections, he issued an order on Lukhēenarain; who in reply stated that on enquiry he had ascertained Mr. Hill was purchaser and in possession of the land, for which he regularly paid 47 rupees, 12 annas, 4 gundas; on which the collector took an agreement from Mr. Hill, on the 17th February 1838, giving him charge (ikrar-nameli zimmeh waree) and authority to enter (amulnameli,) on the condition that he should hold until the assent of the commissioner to the settlement, which had been made with him, should be obtained; that on receipt of the orders of the commissioner, the Board, or the Government, those orders were to be carried out. Mr. Beauchamp had 9 biggahs, 17½ cottahs, formerly belonging to Mr. Reeves, and paid 52 rupees, 10 annas, 7 gundas rent to 1245, and got receipts for the same: plaintiff has no title. The three beegahs round which a brick wall is built, and which belonged to the Government, has all along been in Hastie's possession, and he has paid rupees 17, 1 anna, 1 gundah, to the collector for them, and has receipts. The collector concludes by praying the Government may be excluded from the list of defendants.

Plaintiff replies to Mr. Hastie:—On the 23d Sraon 1223, Bebee Munnoo Cowan got a pottah, from the 10 annas zemindar, of

1 biggah, 15 cottahs, at 9 rupees jumma, and in Maugh of the same year of 1 biggah, 1 cottah, at rupees 16, 13 annas, from the 6 annas sharers. Again on the 2d Bysack 1224, she got another pottah of 8 beegahs at 8 rupees jumma from the 10 annas sharers. She bought, on the 18th February 1813, from Anna DeRozario and John Fulton, heirs of William Fenny, 8 beegahs for 6,000 rupees, and held 18 biggahs, 16 cottahs; she sold the same to James Brown Moore on the 4th October 1823 for 22,000 rupees—the boundaries being detailed in the bill of sale. He held these lands till his death, and I bought them from Mr. Gilbert.

Plaintiff's reply to Mr. Beauchamp:—The collector resumed some of my purchased lands, and also some alluvial land adjoining them on the east. Mr. Moore, the former proprietor, engaged for them, and a recommendation was sent to the commissioner, that 47 rupees, 12 annas, should be fixed as rent of the 7 biggahs, 6 cottahs, from the 25th January 1836. I got an amulnameli for this land and it extends eastward to the river side.

The judge of the 24-Pergunnahs, on the 8th December 1840, gave his decision against the plaintiff's claims as follows.

"Plaintiff produces no proof that the lands for which the action is brought were included in his purchase of 18 biggahs, 14 cottahs, nor can his vakeel say through whom or how he ever had possession of them. Sundry witnesses are brought forward to establish possession, but I do not place any reliance on their evidence. They first say plaintiff is in possession of the entire 18 biggahs, 14 cottahs; again they depose the defendants have ousted plaintiff, but are unable to state where the disputed lands are. Had Beauchamp ousted the plaintiff, he would of course have complained before the magistrate.

"In the case (No. 87,) in which—Hastie, plaintiff, *versus* Beauchamp, defendant,—plaintiff claimed 7 biggahs, 6 chittacks, as being 10 biggahs situate in a lot containing 13 biggahs, which he had purchased and from which the defendant Beauchamp had ousted him in 1831. This case, No. 87, has this day been disposed of. The lands were purchased in 1836, and on measurement proved to be 9 biggahs 17½ cottahs, for which Beauchamp entered into engagements after he had purchased them from Mr. Smoult, and he has paid 52 rupees, 10 annas, 7 pie, rents for them, and got receipts accordingly; on proof of this, Hastie's suit has been dismissed. As Mr. Reeves built a dock yard on the land in 1831, how could Beauchamp dispossess plaintiff in 1836? Moreover Beauchamp purchased in June 1836 only, how could he oust the plaintiff in February of that year?

"As to the 4 biggahs, 13 cottahs, of which plaintiff states he has been dispossessed by Hastie, these lands were on the 5th December 1823 sold to Mr. Coleman by Bebee Brady: he built gates

and pooshta thereon, and held the land, and Hastie after him, and the collector granted a pottah of them, after their resumption : how then can they come within plaintiff's purchased 18 biggahs, 14 cottahs ?

“ On the above grounds, and with reference to the proceedings in case No. 87, above referred to, I dismiss the plaint with costs.”

By the Court:—Plaintiff claims certain lands down to the river side on the east, on the strength of a conditional amulnameh granted to him by the collector of the 24-Pergunnahs, on the 17th February 1838, in consequence of a petition presented by him, applying for a pottah of the said lands, which the collector had resumed as alluvial and newly formed. Plaintiff in the said petition represented himself at that time to be in possession, in virtue of his purchase of the rights of James Brown Moore. Upon this the collector called upon Lukheerian Banorjea, an ameen, to report on the said petition ; and he in reply stated he had ascertained plaintiff was, as he represented himself, the purchaser and in possession of James Brown Moore's rights. It is clear from the measurement papers of Chur Howrah, prepared by the said Lukheerian, that, at the very time he was reporting in favor of the plaintiff, and for many years previously, several holdings of individuals, numbered 23 to 29 in the chittah, amongst whom are parties now represented by the defendants Hastie and Beauchamp, intervened between the lands of the plaintiff and the river side. Plaintiff's amulnameh contains the following particulars of the land granted him, viz. plot No. 14, being 2 biggahs, 4 cottahs, 6 chittacks, and certain new lands 4 biggahs, 16 cottahs, bounded on the east by the river, making a total of 7 biggahs, 0 cottah, 6 chittacks. It is to be observed that there is reference in the amulnameh to the measurement papers of but one plot, i. e. to plot No. 14. Plaintiff being unable to point out the site of the remaining 4 biggahs, 16 cottahs, the Court called for the original chittah of the ameen Lukheerian ; and they find that to the east of plot 14, several plots, in the possession of other individuals already noticed, intervened between the said plot No. 14 and the river ; and this fact is moreover corroborated by one of the pottahs, filed by the plaintiff, viz. that granted by Huris Chunder Ray, the 10 annas zumindar, on the 2d Bysack 1224, to Bebee Cowan, from whom James Brown Moore acquired his rights. In the said pottah the eastern boundary of the lands purchased is described to be Bebee Brady's holding ; to the east of which again the river is situate, so that at that remote period it is clear there was a plot of land between Bebee Cowan's land and the river. Further from the survey made under the Court's orders, compared with the measurement papers on the record, it appears the plot No. 14 has all along been in undisturbed possession of the plaintiff, though he has included it in his plaint. The fact of the collector

having granted plaintiff an amulnameh of some imaginary plot, cannot be allowed to operate to the detriment of others whose rights have long since been acknowledged. They find that certain lands now claimed, formed the subject of litigation between Hastie and Beauchamp, and were decreed by this Court, on the 25th July 1842, to Beauchamp, the papers of which case establish beyond doubt that the parties in it held lands east of plaintiff's, which separated his holding from the river Hooghly.

Under these circumstances the Court dismiss the appeal with costs.



